NOTES OF CASES

SINGAPORE AS A *Forum Conveniens*

The Blue Fruit[1]

The subject of *jorum non conveniens* is, in England, shrouded in a sort of mystery, made the more obscure by reason of the confused remedies often sought and the varied grounds (natural forum, *Us alibi pendens,* foreign jurisdiction clauses and so on) on which the intervention of the local court is sought. As students will know, in *The Atlantic Star*[2] the House of Lords amended the law relating to the staying of proceedings, as set out in Lord Justice Scott's judgment in *St. Pierre* v. *South American Stores (Gath and Chares) Ltd*.[3] as

[1] [1979] 2 M.L.J. 279.

[2] [1974] A.C. 436.

[3] [1936] 1 K.B. 382. Section 41 of the English *Supreme Court of Judicature Act 1925* provided as follows

> No cause or proceeding at any time pending in the High Court at the Court of Appeal shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might formerly have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence thereto:
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> Provided that —
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> (a) Nothing in this Act shall disable either of the said Courts, if it thinks fit to do so, from directing a stay of proceedings in any cause or matter pending before it; and
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> (b) Any person, whether a party or not to any such cause or matter, who would formerly have been entitled to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule or order, in contravention of which all or any part of the proceedings in the cause or matter have been taken, may apply to the High Court or the Court of Appeal, as the case may be, by motion in a summary way, for a stay of proceedings in the cause or matter, either generally, or so far as may be necessary for the purposes of justice, and the Court shall thereupon make such order as shall be just.
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> Order 18, rule 19(1) and (2) of the Singapore *Rules of the Supreme Court 1970* (cp. the English RSC) provides as follows:
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> (1) The Court may at any stage of the proceedings order to be struck and or amended by pleading or the indorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
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> (a) it discloses no reasonable cause of action or defence, as the case may be; or
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> (b) it is scandalous, frivolous or vexatious; or
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> (c) it may prejudice, embarrass or delay the fair trial of the action, or
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> (d) it is otherwise an abuse of the process of the Court;
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> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
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> (2) No evidence shall be admissible on an application under paragraph (1)(a).
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> In the Singapore Supreme Court of Judicature Act the High Court is given "Power to dismiss or stay proceedings where the matter in question is *res judicata* between the parties, or where by reason of multiplicity of proceedings in any court or courts the proceedings ought not to be continued" (First Schedule, para. 10).

follows (I here adopt Lord Diplock's interpretation in *MacShannon* v. *Rockware Glass Ltd.*[4]):

> The true rule about a stay under section 41 [of the 1925 Judicature Act of England]... may ... be stated thus:
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> a. A mere balance of convenience is not a sufficient ground for depriving a plaintiff of the advantages of prosecuting his action in an English Court if it is otherwise properly brought.
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> b The defendant must satisfy the Court that there is another forum to whose jurisdiction he is amenable in which justice can be done between the parties at substantially less inconvenience and expense.
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> c. The stay must not deprive the plaintiff of a legitimate personal or juridical advantage which would be available to him if he invoked the jurisdiction of the English Court.

In the *MacShannon* case we can note the manner in which the burden of proof may be dealt with. Apparently every action has a "natural forum" ("Scotland the natural forum for Scotsmen injured in Scotland", ran the *Times* heading of *MacShannon*). A prudent legal adviser must therefore be cautious in advising a potential plaintiff to institute proceedings outside the "natural forum", as deduced from the relevant facts and appropriate law. Exactly what that forum may be is often a difficult question to decide: for we know *(pace* Lord Diplock) that even a genuine belief justifying the selection of a particular forum is not necessarily enough, if there is no "real advantage" available in that forum.

The choice of a forum is, of course, one thing, and seeking to stay proceedings on the ground that proceedings are pending in another jurisdiction is another: although these two questions are often so intertwined, that one can excuse a certain amount of confusion and inconsistency in judicial pronouncements upon them. So many factors have to be taken into account, and in weighing their merits a judge must often be swayed by odd and apparently irrelevant considerations. Dicey sets out the rule (rule 29 in Dicey and Morris, *Conflict of Laws,* ninth ed.) in very general terms and strong language, as follows:

> The Court has jurisdiction to interfere, wherever there is vexation or oppression, to prevent the administration of justice being perverted for an unjust end, and for this purpose to stay or dismiss an action or other proceeding, or to restrain the institution or continuation of proceedings in foreign courts or the enforcement of foreign judgments. But this jurisdiction will not be exercised against a party to an action unless his proceedings are clearly shown to be vexatious or oppressive.

The forum once chosen, the defendant may object; if the plaintiff can affirm "a legitimate personal or juridical advantage" accruing to him in his chosen forum, the action should, it seems, proceed; if not the action will be stayed. Such appears to be the present position, but it is not at all easy to be sure of this, given the nature of the "critical equation" involved.

In the concept of "natural forum" we hover on the brink of that of *forum conveniens.* In *The Atlantic Star* the House of Lords rejected an invitation to adopt "the Scottish legal doctrine of *jorum non conveniens*: but (in Lord Diplock's words) "the majority (of the House) ... were of opinion that the time was ripe for some further

4 [1978] 1 All E.R. 625.

development of the common law which, as Lord Reid would put it, would bring it more into line with the policy of Parliament and the movement of public opinion." In consequence, the old tests of "oppression" and "vexation" from *St. Pierre* v. *South American Stores*[5] were to be given, in future, "a more liberal interpretation: a situation leading to the adaptation of Lord Diplock, as set out in the three propositions, above.

There is a curious lack of consistency in the present state of English law: a lack occasioned, I suspect, by a nervous fear of appearing to adopt the Scottish or American doctrine of *forum non conveniens.* The use of the term "natural forum" is, however, a useful step forward, and if the term could be defined (the task is not an easy one, and could well form the subject of a useful seminar) the lot of the student of conflict of laws would be the lighter.

It may be that the Singapore courts (perhaps inadvertently, perhaps not) have already made the task of that student the lighter, in the case of *The Blue Fruit*.[6] In this case, materials were supplied and repair work executed by Keppel Shipyard, ship repairers in Singapore, in February 1976, to a ship then known as *The Blue Fruit,* and later re-named as *The Bright Fruit.* The ship was then owned by Universal Seaways, a Singapore company.

The ship left Singapore with the bill for supplies and work unpaid, and in October 1976 an action by Keppel Shipyard was commenced in Manila, where the ship was arrested. However, the action was dismissed for "lack of personality to sue in the Philippines," and the ship released. Some time in 1976 Keppel Shipyard also commenced an action *in personam* against Universal Seaways in the High Court in Singapore, but this was discontinued on 9 March 1977, when a writ of summons *in rem* was issued: although the writ itself was not served until 1978.

On 28 April 1977 a bill of sale would seem to have transferred the legal title to the ship to another owner, the Chung Lien Navigation Company. Two months later in June 1977, Keppel Shipyard (no doubt ignorant of the bill of sale of April) commenced proceedings in the Yokohama District Court against Universal Seaways, in respect of their claims, and caused *The Universal Princess,* a ship owned by Universal Seaways, to be attached for the purpose of obtaining security. A sum of four million yen was deposited in Court by Universal Seaways, and *The Universal Princess* was thereupon released. Whether the question of the ownership of *The Blue Fruit* was then raised does not appear from the report.

On 8 January 1978 the writ of March 1977 was at last served and the ship arrested in Singapore. At the time of the arrest the Japanese proceedings were still pending. A conditional appearance was entered by the Chung Lien Navigation Company, and the Company on 15 February furnished bail in the sum of $150,000: whereupon the ship was released.

[5] [1936] 1 K.B. 382 C.A.
[6] [1979] 2 M.L.J. 279.

The Chung Lien Navigation Company then moved the Singapore High Court for an order that:

a. the proceedings should be set aside for want of jurisdiction, or

b the action should be stayed on the ground that it was frivolous or vexatious, or an abuse of the process of the Court.

On the first point, the Chung Lien Navigation Company contended that the plaintiffs were suing the wrong party, and affirmed that the repairs to the ship were carried out at the request of Universal Seaways, the then owners. The plaintiffs, however, contended that the change of ownership of the ship did not vitiate its arrest under a writ issued (but not served) prior to the transfer of ownership: and further, they alleged that the transfer of ownership was a "sham transaction".

Clearly, therefore, the essential point in the case was that of the ownership of *The Blue Fruit* at the material time — as to which, there was a serious dispute of fact. The trial judge, Choor Singh J., took the view that "such an important issue must go to trial." He therefore saw no reason why the proceedings should be set aside *in limine,* adding that he "was not satisfied on the evidence... that the ship was no longer beneficially owned by Universal Seaways."

On the second plea (that the proceedings were "frivolous", etc.) he considered the argument that the ship repairers "were not entitled to have two suits proceeding at the same time in two different countries, one in Yokohama and one in Singapore, both in respect of the same claim and have double bail, one in Yokohama and another in Singapore as security for their claim." Two English cases, *The Golaa*[7] and *The Christiansborg*[8] were cited in support of this submission.

The learned judge rejected this argument, explaining the principle of *The Christiansborg* (as applied in *The Golaa* and *The Marinero*[9] as follows:

> Where a defendant in order to secure the future immunity of his ship and her future ability to continue trading is forced to give security in a foreign court he cannot be compelled to give further security by the arrest of the same or a sister ship in England. If, notwithstanding the security already given in the foreign proceedings, the ship is arrested again and security demanded for its release, such further arrest would constitute harassment and could be contrary to good faith and vexations.

In the present case security had of course been given by two different entities. "The defendants in this action," observed the judge, "have nothing to do with the proceedings in the Yokohama Court. They are not the defendants in those proceedings. Accordingly they are not prejudiced in any way by the proceedings in the Yokohama Court." Were there any circumstances, he enquired, making it an abuse of the process of the Court to proceed with the case? "The evidence was all the other way." He therefore dismissed the shipowners' motion, with costs.

7 [1926] P. 103.
8 (1885) 10 P.D. 141.
9 [1955] P. 68.

The shipowners appealed, confining their appeal to the plea that the action was frivolous or vexatious, or an abuse of the process of the Court: arguing that "by arresting their ship in Singapore notwithstanding the provision of security in the Japanese proceedings, the respondents (the ship repairers) (had) acted vexatiously and dontrary to good faith as to amount to an abuse of the process of the Court." *The Christiansborg* and *The Marinero* were again cited in support of this argument.

For their part, the ship repairers asked to be allowed to continue the Singapore proceedings, on giving an undertaking to discontinue the Yokohama proceedings and to discharge the bail they had obtained there. At this point they cited Baggallay L.J. in *The Christiansborg,* affirming:

> that where a plaintiff sues the same defendant in respect of the same cause of action in two courts, one in this country and another abroad, there is a jurisdiction in the courts of this country to act in one of three ways —
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> — to put the party so suing to his election, or
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> — without allowing him to elect, to stay all proceedings in this country, or
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> — to stay all proceedings in the foreign country.
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> Whether you adopt the principle of putting him to his election or of staying the proceedings in one of the Courts, must depend on the circumstance of the case.

In support of their argument for an election for Singapore, the ship repairers put forward seven arguments, which were in effect summed up in the first, *viz.*, that Singapore was the *forum conveniens.* The *lex causae* was Singapore law; the repairs to the ship were made in Singapore; the plaintiffs and the owners of the ship were resident in Singapore; and "all the records, witnesses and evidence" material to the action were in Singapore. Arising out of their undertaking to discontinue the proceedings in Yokohama, the ship repairers said that these were begun "because the vessel... was keeping away from the jurisdiction of [the]... Court in order to prevent the plaintiffs from arresting her..."; the plaintiffs and the ship owners were "foreign to the said Yokohama Court"; it was "uncertain" whether the plaintiffs' claim could be "sustained in the said Yokohama Court under Japanese laws and procedures." In short, affirmed the plaintiffs, "the transactions and agreements on which [their] claim [was] founded [had] the most substantial connection with Singapore and not with any other country of jurisdiction."

These arguments, and the undertaking in support, clearly impressed the Court of Appeal, when the Chief Justice (delivering the judgment of the Court) dismissed the appeal. "It is clear that in all the circumstances," he stated, "the Singapore Court is the *forum conveniens* for all parties to the present action." The court distinguished the circumstances of the instant case from those of the English cases cited in argument, and decided that, subject to the plaintiff's undertaking, there were no circumstances which made it an abuse of the process of the court to bring the proceedings.

Cases in Singapore suggest that where the Singapore court has jurisdiction (and it is to be remembered that while the High Court (Admiralty Jurisdiction) Act is based upon the English Administration of Justice Act 1956, section 16 of the Supreme Court of Judicature Act is not) and a ship has been arrested in Singapore, a plaintiff considering that it will be to his advantage to sue in Singapore will probably be sympathetically treated. In *The Sauvereal*,[10] repairs were done to a ship, in Holland, in 1968-9 by a Dutch company. It was alleged that the repairs had been executed negligently, and on that basis an action was commenced in France, in 1969: the proceedings precipitating a counterclaim for the cost of the repairs. In March 1970 the repairers commenced proceedings in Holland for the cost of the repairs, and later in the month the charterers and owners of the ship intervened in and sought (unsuccessfully) a stay of the French proceedings. In December 1971 the ship was arrested, at the instance of the repairers, in Singapore.

In *The Sauvereal* a somewhat confused situation, had (as is common in shipping law) arisen, involving the ship's owners, charterers, agents and repairers. In one sense, the arrest of the ship in Singapore, at the instance of the repairers, was an effort to cut the Gordian knot of proceedings pending in Holland and France. The Singapore judge (Chua J.) was impressed by the plaintiffs' election to sue in Singapore and to discontinue proceedings in Holland. He said that it would be "a great hardship on the plaintiffs if they lose the ship as there is *no other way in which they can get security* (my italics)." He therefore refused to stay the Singapore action, subject to the plaintiffs' discontinuance of proceedings in Holland. No "fruits" had been obtained from the French proceedings, where the court had merely decided a preliminary point of jurisdiction in favour of the claimants. In argument, the *St. Pierre* case, *The Christiansborg* and *The Eleftheria* were, *inter alia,* cited.

In *The Using An* [11] Chua J. again considered the *St. Pierre* case, together with *The Atlantic Star.* Here, again, a complex set of facts involving the ownership of a vessel faced the court. *The Hsing An,* built in Taiwan, was arrested in Singapore by plaintiffs (a Panama company) claiming that they were the owners of the ship as against the defendants, a Taiwan company, and, as such, entitled to have the legal title in the ship transferred to them. The defendants asked for the proceedings be set aside as disclosing no reasonable cause, of action, or that proceedings be stayed on the ground that they were vexatious and oppressive and an abuse of the process of the court. On the first point, the learned judge (having ascertained that on the pleadings themselves there appeared to be a reasonable cause of action) had little difficulty in rejecting the plea. On the second point (vexation, oppression and abuse of process), he had to consider with some care the then recent case of *The Atlantic Star.* Having interpreted the principles of that case, Chua J. observed that:

> The main object of the plaintiffs in suing here (in Singapore) was to obtain *the necessary security for their claim* (my italics) and it could hardly be denied that this was an 'advantage' [part] of "the critical equation" of advantage to the plaintiff and disadvantage to the defendant:

[10] [1972] 2 M.L.J. 1.
[11] [1974] 1 M.L.J. 45.

> see Lord Wilberforce in *The Atlantic Star*] which the plaintiffs can legitimately seek and which it would be an injustice to deny.... The danger of the plaintiffs being completely exposed if the security here disappears is certainly very real. In *The Atlantic Star* the shipowner . . . was a big firm....

In the result, the defendants failed to satisfy the court on the second ground: so the action continued.

The fact that a ship has been arrested, and security obtained in Singapore, is (from the above authorities) clearly a weighty factor, especially when coupled with a plaintiffs apparent lack of success in obtaining what appears to be his due, within another jurisdiction. The Singapore courts have therefore shown a positive approach to a plaintiff's claim; and if the plaintiff is willing to elect to pursue his claim in Singapore and to discontinue any claim elsewhere, then the fact that issues of ownership involving questions of foreign law may arise does not appear to militate against a Singapore action. The courts here manifest a degree of confidence worthy of a free port under a common law jurisdiction.

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