All England Law Reports/1978/Volume 2 /Hesperides Hotels Ltd and another v Muftizade - [1978] 2 All ER 1168

Hesperides Hotels Ltd and another v Muftizade

HOUSE OF LORDS

LORD WILBERFORCE, VISCOUNT DILHORNE, LORD SALMON, LORD FRASER OF TULLYBELTON AND LORD KEITH OF KINKEL

8, 9, 10, 11, 15, 16, 17 MAY, 6 JULY 1978

Conflict of laws - Foreign land - Trespass to foreign land - Jurisdiction of English courts to entertain action for trespass to foreign land - Action framed as claim for conspiracy in England to effect trespass to foreign land - Whether jurisdiction to entertain action.

Conflict of laws - Foreign chattels - Conversion of chattels in foreign country - Jurisdiction of English courts to entertain action for conversion of chattels in foreign country - Dispossessed owners of chattels in Cyprus bringing action in England for conspiracy to effect trespasses to chattels in Cyprus - Sufficient facts alleged to support claim in conversion - Whether jurisdiction to entertain action.

The appellants, two companies owned and controlled by Greek Cypriot families, were the respective owners of two hotels at Kyrenia in northern Cyprus. In July 1974 Turkey invaded and occupied northern Cyprus including Kyrenia. In consequence the Greek Cypriots controlling the appellant companies fled to southern Cyprus and had been unable to return to Kyrenia. Northern Cyprus was controlled by a body calling itself the Turkish Federated State of Cyprus which authorised the occupation and use of the appellants' hotels by Turkish Cypriots. In 1976 the Turkish Federated State of Cyprus issued in England, through a London travel agency, brochures which advertised the hotels to English holiday-makers from whom bookings for holidays at the hotels were accepted by the travel agency. On 16 February 1977 the appellants issued a writ against the travel agency and against the respondent, the London representative of the Turkish Federated State of Cyprus. In the writ the appellants asserted ownership of the hotels, admitted that they had been out of possession of them since 1974, and asserted that the travel agency and the respondent had conspired together to effect trespasses to the hotels by the unauthorised use of them. The writ claimed, inter alia, damages for conspiracy to effect the trespasses. The respondent applied to a judge in chambers to have the writ set aside on the ground that English courts had no jurisdiction to entertain an action for damages for trespass to land situated abroad. The judge upheld the writ and the respondent appealed to the Court of Appeal. On the hearing of the appeal the appellants amended the writ to claim as additional relief damages for conspiracy to effect trespasses to the contents of the hotels. The appellants' title to the hotels was not disputed by the respondent.

The Court of Appeal unanimously held that the writ should be set aside, the majority so holding because (i) the appellants' claim fell within the rule of law that English courts had no jurisdiction to entertain an action for the determination of the right to possession of foreign land or for the recovery of damages for trespass to foreign land and that the claim for conspiracy had been framed as a device to overcome that rule; and (ii) the claim for conspiracy to effect a trespass to the contents of the hotels, although not barred by the rule (which only applied to land) nevertheless disclosed no cause of action because the appellants were not in possession of the contents at the time of the alleged conspiracy.

On appeal, the appellants, while accepting the rule that English courts had no jurisdiction to entertain an action for damages for trespass to foreign land where there was a dispute as to title, submitted (i) that the rule did not apply where there was no dispute as to title of foreign land; (ii) nor did the rule apply to an action based on a conspiracy to effect or procure trespass to foreign land if the conspiracy was entered

into in England; (iii) that the rule should if necessary be restated to the extent required to allow their action to be brought; and (iv) that their action in respect of trespasses to the contents of the hotels could properly be laid in conversion.

Held - (i) The rule of law that English courts had no jurisdiction to entertain an action for the determination of the title to, or the right to the possession of, foreign land or the recovery of damages for trespass to foreign land was not limited to cases where there was a dispute as to title. The rule applied to the appellants' claim for trespass to the hotels even though no question of title or the right to possession of them had been raised (see p 1173 *h* to p 1174 *b* and *g*, p 1179 *d e*, p 1180 *b*, p 1183 *b* and p 1184 *e*, post); *British South Africa Co v Companhia de Mocambique* [1891-4] All ER Rep 640, explained and applied.

(ii) Furthermore, the appellants' claim for conspiracy to effect a trespass to the hotels depended on them showing an intention to effect a trespass on foreign land, and that could only be established if the court was able to adjudicate on the right to possession of the foreign land, which in turn was precluded by the rule, and (per Lord Fraser of Tullybelton) the claim for conspiracy was merely an attempt to dress up a substantive claim in trespass in the guise of a claim for conspiracy (see p 1174 *g* to p 1175 *b*, p 1179 *g h*, p 1180 *b*, p 1183 *b c* and *g h* and p 1184 *e*, post); *British South Africa Co v Companhia de Mocambique* [1891-4] All ER Rep 640 applied.

(iii) There was not sufficient reason to revise or restate the rule, having regard to the fact that it was accepted in other common law jurisdictions; a change might well involve questions of the comity of nations because of the possible conflict with foreign jurisdictions and this was a matter for legislation rather than judicial decision; consequential changes in English law, eg to prevent forum shopping, would be required; and there had not been a sufficient change of circumstances to justify changing the rule. Accordingly the appeal would be dismissed in regard to the appellants' claim for damages for conspiracy to effect trespasses to the hotels, and the order striking out the writ and substantive claim so far as they related to land or immovable property in Cyprus would be upheld (see p 1175 *c d* and *f g*, p 1176 *c* to *e*, p 1179 *e f* and *h* to p 1180 *a b*, p 1182 *d e* and *h* to p 1183 *a* and p 1184 *e*, post).

(iv) The appellants' claim for conspiracy to effect trespasses to the contents of the hotels was not barred by any rule of law and could validly be laid in conversion, since the appellants had alleged interference with their chattels, no local law was relied on by the respondent to justify the interference, and it was not necessary for a claim in conversion that the appellants had been in possession of the chattels at the time of the conversion. The appeal would therefore be allowed to the extent necessary to permit the appellants' action to continue in respect of the claim for conspiracy to effect trespasses to the contents of the hotels (see p 1176 *h* to p 1177 *a*, p 1180 *a b* and p 1183 *j* to p 1184 *a* and *d e*, post); *Albert v Fraser Companies Ltd* [1937] 1 DLR 39 distinguished.

Decision of the Court of Appeal, sub nom *Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd* [1978] 1 All ER 277 varied.

Notes

For jurisdiction of English courts with respect to foreign land, see 8 *Halsbury's Laws* (4th Edn) paras 638, 640, and for cases on the subject, see 11 *Digest* (Reissue) 396-399, *367-393*.

Cases referred to in opinions

Albert v Fraser Companies Ltd [1937] 1 DLR 39, 11 MPR 209, 11 *Digest* (Reissue) 398, **245.*

Atlantic Star, The, The Atlantic Star (Owners) v The Bona Spes (Owners) [1973] 2 All ER 175, [1974] AC 436, [1973] 2 WLR 795, HL, 11 *Digest* (Reissue) 645, *1777.*

[1978] 2 All ER 1168 at 1170

Brisbane v Pennsylvania Railway Co (1912) 205 NY 431, 98 NE 752.

British South Africa Co v Companhia de Mocambique [1893] AC 602, [1891-4] All ER Rep 640, 63 LJQB 70, 69 LT 604, HL; *rvsg* sub nom *Companhia de Mocambique v British South Africa Co* [1892] 2 QB 358, 61 LJQB 663, 66 LT 773, DC & CA, 11 *Digest* (Reissue) 398, *388.*

Doulson v Matthews (1792) 4 Term Rep 503, 100 ER 1143, 11 *Digest* (Reissue) 398, *385.*

Gray v Manitoba and North Western Railway Co (1896) 11 Man Rep 42.

Inglis v Commonwealth Trading Bank of Australia (1972) 20 FLR 30.

Jacobus v Colgate (1916) 217 NY 235.

Livingston v Jefferson (1811) 15 Fed Cas 660, 1 Brock 203.

London Corpn v Cox (1867) LR 2 HL 239, 36 LJEx 225, HL, 16 *Digest* (Repl) 117, *31.*

MacShannon v Rockware Glass Ltd [1978] 1 All ER 625, [1978] 2 WLR 362, HL.

Miliangos v George Frank (Textiles) Ltd [1975] 3 All ER 801, [1976] AC 443, [1975] 3 WLR 758, [1976] 1 Lloyd's Rep 201, HL, *Digest* (Cont Vol D) 571, *678b.*

Mostyn v Fabrigas (1775) 1 Cowp 161, [1775-1802] All ER Rep 266, 20 State Tr 81, 98 ER 1021, 11 *Digest* (Reissue) 495, *944.*

Penn v Lord Baltimore (1750) 1 Ves Sen 444, 27 ER 1132, LC, 11 *Digest* (Reissue) 404, *423.*

Phillips v Eyre (1870) LR 6 QB 1, 10 B & S 1004, 40 LJQB 28, 22 LT 869, Ex Ch, 11 *Digest* (Reissue) 495, *946.*

Potter v Broken Hill Pty Co (1906) 3 CLR 479, 12 ALR 149, [1906] VLR 292, 11 *Digest* (Reissue) 501, **573.*

Ruthven v Ruthven (1905) 13 SLT 409.

Skinner v East India Co (1666) 6 State Tr 710, 11 *Digest* (Reissue) 396, *369.*

United Africa Co Ltd v Owners of MV Tolten, The Tolten [1946] 2 All ER 372, [1946] P 135, [1947] LJR 201, 175 LT 469, CA, 11 *Digest* (Reissue) 398, *387.*

Interlocutory appeal

By a writ issued on 16 February 1977 the appellants, Hesperides Hotels Ltd and Catsellis Hotels Ltd, companies incorporated according to the law of the Republic of Cyprus and respectively the owners and proprietors of the Hesperides Hotel and the Dome Hotel ('the hotels') situated at Kyrenia, Cyprus, brought an action against Aegean Turkish Holidays Ltd and the respondent, Omer Faik Muftizade, claiming damages for conspiracy to effect trespasses to the hotels and an injunction restraining Aegean Turkish Holidays Ltd and the respondent by their servants, agents or otherwise from conspiring or acting in any way whatsoever to procure, encourage or facilitate a trespass to the hotels or to procure the unauthorised use of the hotels. By summons dated 4 March 1976 the appellants applied to the judge in chambers for an interlocutory injunction, until after the trial of the action or further order, in terms of the injunction claimed in the writ. Aegean Turkish Holidays Ltd gave an undertaking in the terms of the injunction claimed by the writ. By an order dated 6 April 1977 May J, on the appellants' giving a cross-undertaking as to damages, granted an injunction restraining the respondent by himself, his agents or servants or howsoever otherwise from conspiring or acting in a way whatever to procure, encourage or assist a trespass to the appellants' hotels until after the trial of the action or further order, and dismissed the respondent's application for an order setting aside the writ as against him. The respondent appealed, seeking an order that the injunction should be discharged and the writ set aside on the grounds (i) that the court had no jurisdiction to entertain the appellants' action, (ii) that the statement of claim disclosed no reasonable cause of action and/or the action was an abuse of the process of the court, (iii) that there was no evidence that the respondent had committed or threatened to commit any tort as against the appellants and the judge had misdirected himself in finding to the contrary, and (iv) that if, contrary to ground (i), jurisdiction existed, the court in the exercise of its misdirection ought not to grant interlocutory relief in the special circumstances of the case and/or that the grant of relief by the judge had been wrong in principle.

[1978] 2 All ER 1168 at 1171

By a respondent's notice the appellants gave notice that at the hearing of the appeal they would contend that the order dated 6 April 1977 should be affirmed on grounds additional to those relied on by the judge, namely (i) that the court had jurisdiction to entertain the appellants' claim against the respondent because the ratio decidendi of *British South Africa Co v Companhia de Mocambique* ([1893] AC 602, [1891-4] All ER Rep 640) had no application in a suit where title to land situated abroad was not in dispute and the claim was for damages for trespass to the land and the defendant was within the jurisdiction, or where an investigation or issue as to title to land situated abroad arose incidentally or where the defendant had acted unconscionably, and (ii) that there was no other forum in which the appellants' claim against the respondent could have been brought. During the hearing of the appeal the appellants amended their statement of claim pursuant to RSC Ord 20, r 3, by adding a claim for damages for conspiracy to effect a trespass to chattels, ie the contents of the hotels, and extending the claim for an injunction to the contents of the hotels.

On 23 May 1977 the Court of Appeal ([1978] 1 All ER 277) (Lord Denning MR, Roskill and Scarman LJJ) allowed the respondent's appeal, discharged the injunction and set aside the appellants' amended writ. The court refused the appellants leave to appeal to the House of Lords. On 21 July 1977 the Appeal Committee of the House of Lords granted the appellants leave to appeal limited to that part of the order striking out the amended writ. The facts are set out in the opinion of Lord Wilberforce.

David Kemp QC and George Newman for the appellants.

F P Neill QC, Gerald Davies and Nicholas Padfield for the respondent.

6 July 1978. The following opinions were delivered.

LORD WILBERFORCE.

My Lords, this appeal is from an order of the Court of Appeal setting aside the appellants' writ against the respondent, Mr Omer Faik Muftizade, for want of jursidiction.

The appellants are two companies registered under the laws of the Republic of Cyprus. They are family concerns owned and controlled by Greek Cypriots. Before 1974, in which year Turkish forces took possession of areas in the north of Cyprus, these companies were owners of two hotels in Kyrenia, on the north coast. Hesperides Hotels Ltd, owned and operated one called the Hesperides; Catsellis Hotels Ltd, one called the Dome. After the Turkish invasion those who controlled the appellants left Kyrenia and went to Limassol, which is on the southern coast and is in the Greek Cypriot area. In 1976 it came to their knowledge that efforts were being made in London to organise holiday tours to the hotels. There was a body calling itself the Turkish Federated State of Cyprus which issued brochures; there was, a travel agency called Aegean Turkish Holidays Ltd which handled these brochures, and, it is said, accepted bookings for the hotels from intending holiday-makers in England. The Turkish Federated State of Cyprus has as its representative in London, Mr Muftizade, the respondent to this appeal.

On 16 February 1977 the appellants issued a writ with statement of claim endorsed against Aegean Turkish Holidays Ltd and the respondent claiming damages, in effect for conspiracy, an account of profits and an injunction restraining the defendants from conspiring to procure acts of trespass to the appellants' hotels. They also issued, on 4 March 1977, a summons claiming an interim injunction in the same terms. The respondent entered a conditional appearance and himself issued a summons for

an order setting aside the writ. The summonses came on for hearing before May J on 1 April 1977.

The respondent's contentions, at this stage, were twofold. First he claimed immunity from suit on the basis that the Turkish Federated State of Cyprus was a foreign sovereign state and that he was its representative. Secondly he contended that the court had no jurisdiction to entertain the action on the principle established by this House in *British South Africa Co v Companhia de Mocambique* ('the *Mocambique* case'). To enable himself to deal with the first point May J addressed an enquiry to the Secretary of State, Foreign and Commonwealth Office, asking whether Her Majesty's Government recognised de jure or de facto, the Turkish Federated State of Cyprus and whether Her Majesty's Government accords any diplomatic privilege to the respondent. On 6 April 1977 the Secretary of State replied giving a negative answer to each of these questions. These replies disposed of the respondent's first contention. On the second point the judge decided that the court had jurisdiction to try a claim based on a conspiracy to procure trespass to foreign land when the conspiracy took place in this country and there were overt acts in this country. He granted an interim injunction in the terms claimed and dismissed the respondent's summons.

On 13 May 1977 a consent order was made against Aegean Turkish Holidays Ltd under which they submitted to a perpetual injunction restraining them from conspiring or acting in any way to procure trespasses to the hotels and to an order for payment to each appellant of £10 by way of damages for conspiracy to trespass. It is asserted in the respondent's case (their Lordships accept in good faith), in support of his contention that there had been an accord and satisfaction, that this sum has been paid, but it was conceded, on the hearing of the appeal, that this fact could not be established.

The respondent appealed to the Court of Appeal against the order of May J and added, by leave, an additional ground, that the statement of claim disclosed not reasonable cause of action and/or should be struck out as an abuse of the process of the court. At the hearing of the appeal the respondent adduced voluminous additional evidence directed to showing the development since 1974 of affairs in Cyprus and to proving the actual situation prevailing in the island. This was to be the foundation of an argument in the Court of Appeal and in this House that, in spite of the certificate of the Secretary of State, there was an autonomous administration in each part of Cyprus of which and of whose 'legislation' the court can take note. The appellants objected to this evidence on the ground that it contradicted the certificate of the Secretary of State, that it was contentious, and that they had no opportunity to answer it. The Court of Appeal however admitted it.

Further, in the course of the hearing before the Court of Appeal, the appellants amended their statement of claim alleging a conspiracy to procure trespasses to the contents of the hotels, no doubt with the expectation of thereby escaping from the consequences of the rule in the *Mocambique* case. The Court of Appeal unanimously allowed the respondent's appeal but differed in the reasons they gave for doing so. Roskill and Scarman LJJ held that the action was precluded by the rule in the *Mocambique* case, nonetheless though it was presented in the form, or guise, of a conspiracy. They also held that the action was not maintainable as regards the chattels (contents of the hotels) since it was based on trespass (not conversion) and since the appellants were admittedly out of possession. Lord Denning MR held that the *Mocambique* rule should be confined to cases where there is a dispute as to title and that the court have jurisdiction to try a claim based on a conspiracy in England. He held however that the action, being an action in tort, was not maintainable because the acts complained of were not unlawful under the lex loci actus: notice could be taken of the 'laws' of the Turkish Federated State of Cyprus which authorised the acts. Moreover public policy rendered the dispute not justiciable in England there being two conflicting administrations in Cyprus.

[1978] 2 All ER 1168 at 1173

I shall consider first the question whether the present action is precluded by the rule in the *Mocambique* case. The appellants' arguments are threefold. First, they contend that the rule established by that case has no application where there is no dispute as to the title to foreign land and (I use their words) 'no real dispute over the right to possession of the foreign land'. This result, they say, can be reached by a process of interpretation of the decision of this House without departing from it. Secondly, they invite your Lordships to overrule, or depart from, the decision in the *Mocambique* case, at least to the extent necessary to allow the present action to be brought. Thirdly, they argue that the rule has no application to an action based on a conspiracy entered into in England even if the conspiracy is to effect or procure trespass to foreign land.

The rule in the *Mocambique* case can be conveniently stated in the form in which it is generally accepted, viz, in Dicey and Morris's The Conflict of Laws, r 79. I quote from the ninth edition[a], but it appears as r 53 in the same form (except for one letter) in the third edition[b] edited by Professor Dicey himself and Dr Berriedale Keith--

[a] (1973), p 516

[b] (1922), p 223

'Subject to the Exceptions hereinafter mentioned, the court has no jurisdiction to entertain an action for (1) the determination of the title to, or the right to the possession of, any immovable situate out of England (foreign land); or (2) the recovery of damages for trespass to such immovable.'

The exceptions later mentioned relate to actions in equity *(Penn v Lord Baltimore)* and other special cases on which reliance cannot be placed in this appeal.

It will be seen that the rule is in two parts. If either applies, the court has no jurisdiction. The second part refers to the recovery of damages for trespass and if correctly stated must (subject only to the conspiracy point) preclude the action. So the questions are (1) whether this part of the rule is correct in law, (2) whether it should be read subject to an exception for actions where no question as to title arises. My Lords, the answer to the first of these questions cannot, in my opinion, admit of doubt. The history of the rule, which is a long one, was examined in depth in the *Mocambique* case, both in this House and in the Court of Appeal. Two of the Lords Justices in the Court of Appeal were prepared to hold that an action in trespass, being in their view an action in personam, could lie against a defendant found in England: Lord Esher MR thought otherwise and his opinion prevalied in this House. In his speech (which I shall not attempt to summarise) Lord Herschell LC traced the development of the rule from *Skinner v East India Co* in 1666 to 1893: it was Lord Mansfield who attempted, in two cases decided by himself and referred to in *Mostyn v Fabrigas* ((1775) 1 Cowp 161 at 180, 181, [1775-1802] All ER Rep 266 at 273, 274), to support the doctrine that actions for trespass against a defendant in England could lie. But this doctrine was decisively rejected in *Doulson v Matthews* ((1792) 4 Term Rep 503 at 504), per Buller J:

> 'It is now too late for us to inquire whether it were wise or politic to make a distinction between transitory and local actions: it is sufficient for the Courts that the law has settled the distinction, and that an action *quare clausum fregit* is local. We may try actions here which are in their nature transitory, though arising out of a transaction abroad, but not such as are in their nature local.'

It has not been revived since in any English reported case.

There is no more doubt, in my opinion, as to the second question. It is certainly

true that in the *Mocambique* case itself the plaintiff's title was disputed, but the House considered the legitimacy of actions in trespass in the broadest and most general terms. Lord Herschell LC opened his speech in these words ([1893] AC 602 at 617, [1891-4] All ER Rep 640 at 643): 'The principal question raised by this appeal is whether the Supreme Court of Judicature has jurisdiction to try an action to recover damages for a trespass to lands situate in a foreign country', and the whole of the discussion is in terms as general as this. The rejection of Lord Mansfield's doctrine is inconsistent with any supposed limitation of the rule to a case where title is disputed, for in neither of the cases decided by him was there a dispute as to title. But Lord Herschell LC (as Buller J before him), recognising this fact ([1893] AC 602 at 624, [1891-4] All ER Rep 640 at 647), rejected the admissibility of actions in trespass. There are passages no doubt in the speech which are directed towards the actual facts of the case which the House was considering, in which not only was there a dispute as to title, but the action was brought in order that the title should be determined. In these passages Lord Herschell LC draws attention to the particular, and additional, difficulties which would be involved if the English court were to adjudicate on title. But in my understanding these are treated as a fortiori cases, and there is nothing in the examination of them which supports a proposition that the rule is limited to them.

The speech of Lord Halsbury follows the same course. He states the question for decision in the same general way as it had been stated by Lord Herschell LC ([1893] AC 602 at 630, [1891-4] All ER Rep 640 at 651) and he deals with it similarly without a single reference, even as regards the case under discussion, to support an argument that the rule applies only when title is disputed.

My Lords, this is not the first time that this supposed limitation of the rule has been contended for. It was raised in *The Tolten* and firmly rejected by Somervell LJ ([1946] 2 All ER 372 at 386, [1946] P 135 at 163)

and by Cohen LJ ([1946] 2 All ER 372 at 389, [1946] P 135 at 169). It is suggested that Scott LJ took a different view, but all he said ([1946] 2 All ER 372 at 374, 375, [1946] P 135 at 141, 142) was this:

> 'I recognise that in a case where the action is brought by a party in possession of land and structures, suing merely for damages for negligence, or even, it may be, for trespass *quare clausum fregit*, and the plaintiff relies solely on his possession as the foundation for his action, the House of Lords might hereafter distinguish the *Mocambique* case, but I think that it would not be right for this court to attempt the distinction as I am satisfied that in regard to common law actions no such distinction was then in the mind of the House.'

But, whether or not this House possesses greater powers of distinguishing earlier decisions than does the Court of Appeal, a question which may raise some interesting jurisprudential questions, I hardly find in this passage any encouragement to exercise such powers as we have.

I therefore regard the formulation in Dicey[c], r 79(2), as correctly stating the law.

[c] Dicey and Morris, The Conflict of Laws (9th Edn, 1973), p 516

Before considering whether we should overrule or depart from the *Mocambique* rule in any respect I must deal with the argument that we have here the distinguishable claim of a conspiracy formed in England. The majority in the Court of Appeal gave short shrift to this argument and I think they were right. In my opinion the answer to this argument is to be found in a passage in the judgment of Scarman LJ ([1978] 1 All ER 277 at 293, 294, [1978] 1 QB 205 at 231):

> 'But, more significant, the reliance on the alleged conspiracy as distinct from the alleged trespass which it is intended to effect is wrong in principle. The

> combination or agreement, which is said to constitute (with overt acts and ensuing damage) the tort of conspiracy is unlawful only if there be the intention to effect a trespass on foreign land. Unless that be shown there is nothing unlawful. And that can be established only if the court is prepared to adjudicate on the right to possession of the foreign land, which is exactly what the House of Lords said the English courts may not do: see Lord Herschell LC [[1893] AC 602 at 624, 625, [1891-4] All ER Rep 640 at 648] in the passage already cited.'

I gratefully adopt this passage on which I am unable to improve.

The rule being then as I have stated it, should your Lordships accede to the appellants' invitation to restate it in different terms? There is no doubt that the rule can be criticised. Although Professor Dicey seems to have approved it[d] the diligence of the appellants' counsel has assembled a massive volume of academic hostility to the rule as illogical and productive of injustice[e]. Although these writers are concerned with the conflict of laws, as to which academic authority is of particular value, rather than with the English law as to jurisdiction which is what now concerns us, the consensus as to where considerations of logic and justice might lead if this matter were tabula rasa is impressive. But there are other factors to be weighed when revision of an old established rule, sanctioned by this House, is suggested.

[d] The Conflict of Laws (3rd Edn, 1922), p 223 and 224

[e] See inter alia Dicey and Morris, Conflict of Laws (9th Edn, 1973), pp 516-518; Cheshire Private International Law (3rd Edn, 1947), p 719, (8th Edn, 1970), p 481, (9th Edn, 1974), p 495; ALI Restatement (2d) Conflict of Laws, § § 10, 87, Beale, Conflict of Laws (1935), § 614; Goodrich, Conflict of Laws (4th Edn, 1964) § 96; Ehrenzweig, Conflict of Laws (1962), s 39

First, the rule is accepted, with differing degrees of force and emphasis in other jurisdictions of the common law. Their Lordships were referred to cases decided in Australia and Canada which accept the rule and to none which reject it: see *Potter v Broken Hill Pty Ltd*, *Inglis v Commonwealth Trading Bank of Australia*, *Gray v Manitoba and North Western Railway Co.* In *Albert v Fraser Companies Ltd* the Supreme Court of New Brunswick specifically discussed the question whether the *Mocambique* decision can be limited to a case where title is in dispute, and held that it could not (see also Sykes, Australian Conflict of Laws[f]). In the United States of America the rule appears to be accepted in the great majority of jurisdictions, Arkansas, Minnesota and Missouri being the only states in which it has been judicially departed from. In general the courts have followed the judgment of Marshall CJ in *Livingston v Jefferson* in which the learned Chief Justice, seeing no good reason for the rule, upheld it for the sake of consistency and continuity. In New York and Virginia it has been altered by statute (see further below). In Scotland a similar rule appears to prevail without certainty of definition: see Anton, Private International Law[g].

[f] (1972), p 202

[g] (1967), p 125

Secondly the nature of the rule itself, involving, as it clearly must, possible conflict with foreign jurisdictions, and the possible entry into and involvement with political questions of some delicacy, does not favour revision (assuming such to be logically desirable) by judicial decision, but rather by legislation. I am impressed in this context by the judgment of Cullen CJ ((1912) 205 NY 431 at 434) in the Court of Appeal of New York given in 1912 which contains this passage:

[1978] 2 All ER 1168 at 1176

> 'The authorities in the highest courts of this state are uniform to the effect that our courts have no jurisdiction of an action for damages for injuries to real estate lying without the state, and the latest decisions are quite recent ... . It was so held by Chief Justice MARSHALL in *Livingstone* v. *Jefferson*, where he decided that an action could not be maintained in Virginia for trespass upon lands in Louisiana. Such also is the rule in the great majority of the states ... though there are some where the contrary rule prevails ... and the old law was changed in Virginia by statute. Were the question an open one, I would favor the doctrine that our courts have jurisdiction of actions to recover damages for injuries to foreign real estate. Chief Justice MARSHALL in *Livingstone* v. *Jefferson*, expressed his personal disapproval of the rule which he felt bound to give effect under the authorities. In the century which has elapsed since Chief Justice MARSHALL'S decision, all the decisions in this state which I have cited have been rendered. At this late day I think we would not be justified in overruling these cases, but should leave it to the Legislature to change the rule by statute.'

Thirdly, revision of the rule may necessitate consequential changes in the law. In order to prevent 'forum shopping' and overlapping, one such change would have to relate to 'forum non conveniens', a principle not yet fully developed in England (see *The Atlantic Star*, *MacShannon v Rockware Glass Ltd)* and, if English courts were to be given an extended jurisdiction, requiring legislative definition.

Fourthly, it cannot be said that since 1893 there has been such a change of circumstances as to justify this House in changing the rule (cf *Miliangos v George Frank (Textiles) Ltd)*.

On these considerations I have reached the conclusion that the necessary conditions to bring into operation the Practice Direction of 1966[h] do not exist and that the rule should be maintained in this House. The consequence is that the appellants' action, as regards the hotels themselves, being land situate abroad, cannot be maintained. In view of this conclusion it is not necessary to enter on the questions raised by the respondent's counsel as to the degree of notice (if any) which the courts should take of the situation in Cyprus and of 'laws' passed by the non-recognised Turkish Federated State of Cyprus. These gave rise to an interesting and learned argument for which the House is indebted but having regard to the nature of the issues raised I think that the present is not the occasion to pass on them.

[h] *Note* [1966] 3 All ER 77, [1966] 1 WLR 1234

There remains the appellants' claim as regards the chattel contents of the hotels. To this the *Mocambique* rule has no application. Moreover the alleged 'laws' passed in the Turkish Federated State of Cyprus do not extend to the chattels. The Court of Appeal, however, struck out this part of the appellants' claim on the ground that for such a claim to be admissible the plaintiffs must be in possession of the chattels in question. But a claim could validly be laid in conversion: the appellants allege sufficient facts to support such a claim and it is not necessary in modern pleadings to attach a specific label to it if the factual basis is there, so the claim can be asserted without amendment. *Albert v Fraser Companies Ltd* on which the respondent relied does not assist him, for in that case there was no direct allegation in the plaintiff's statement of claim of any trespass to his personal property (see per Baxter CJ ([1937] 1 DLR 39 at 46)). In the present case interference with the appellants' chattels is distinctly alleged and, moreover, no local law is relied on as justifying the interference.

I would allow the appellants' appeal so far as to permit the action to continue as

regards the chattels but I would uphold the order striking out the writ and substantive claim so far as it relates to land or immovable property in Cyprus.

VISCOUNT DILHORNE.

My Lords, on 23 May 1977 the Court of Appeal (Lord Denning MR, Roskill and Scarman LJJ) ordered that the writ in these proceedings should be set aside. By that writ endorsed with a statement of claim, the appellants, the owners of two hotels in Kyrenia in northern Cyprus, the first appellant being the owner of the Hesperides Hotel now called the Kyrenia Rocks, and the second appellant being the owner of the hotel called the Dome Hotel, claimed damages from, and an injunction against two defendants, the first a travel agency called Aegean Turkish Holidays Ltd and the second the respondent to this appeal. They alleged that the travel agency and the respondent had 'conspired together and with others unknown to effect trespasses to the said hotels and/or have conspired together to obtain advantage for themselves by the unauthorised use' of the appellants' property.

The alternative conspiracy alleged appears to be in substance also an allegation in different language of a conspiracy to effect trespasses to the hotels, and it was not contended on behalf of the appellants that if the court had no jurisdiction to hear the claim in respect of the conspiracy to effect trespasses, it nevertheless had jurisdiction to entertain the claim under the alternative head.

Of these allegations of conspiracy the statement of claim purported to give particulars. They alleged that the travel agency had held itself out as willing to book, and had booked accommodation for holidays at the appellants' hotels, and that the respondent had counselled and procured divers persons to commit trespass to the hotels. The only link between the travel agency and the respondent disclosed by these particulars was the alleged possession by the travel agency of a brochure issued by the Turkish Federated State of Cyprus headed 'Hotels 1976', which advertised hotels in the area of Cyprus occupied by Turkish troops including the Kyrenia Rocks, and the alleged distribution of the brochure by the respondent. The statement of claim alleges that in August 1974 the appellants, limited companies, were with their servants or agents forced to flee from their hotels in consequence of the Turkish invasion, and were deprived of all access to them and have consequently lost control and possession of the hotels.

On 4 March 1977 the appellants took out a summons seeking an interim injunction restraining the travel agency and the respondent from conspiring or acting in any way to procure a trespass to the hotels, and on the 31 March 1977 the respondent took out a summons asking that the writ should be set aside. Both summonses were heard by May J on 6 April. He granted an interim injunction against the respondent and dismissed his application that the writ against him should be set aside.

On 10 May the respondent gave notice of appeal which was amended pursuant to leave granted by the Court of Appeal on 19 May, and on 13 May Peter Pain J by consent granted an injunction against the travel agency which submitted to judgment for £20 by way of damages for conspiracy to trespass.

In the course of the hearing before the Court of Appeal the appellants amended the statement of claim to include an allegation that the travel agency and the respondent had conspired together and with others to effect trespasses to the contents of the hotels. The respondent in his case presented to this House alleged that each of the appellants had been paid £10 pursuant to the consent order made by Peter Pain J and contended that the respondent was thereby released from the appellants' claim. It subsequently emerged during the course of the argument in this House that the money had not been paid. As the consent order was made before the statement of claim was amended it could not operate as a bar to the appellants' claim so far as it relates to the contents of the hotels.

In *British South Africa Co v Companhia de Mocambique* the headnote states that it
[1978] 2 All ER 1168 at 1178

was held that the Supreme Court of Judicature has no jurisdiction to entertain an action to recover damages for trespass to land situate abroad. The respondent relies strongly on this decision. The appellants however contend that the case only decided that there was no jurisdiction to entertain such a claim when title to the land abroad was involved. Further, they say that the House should in the exercise of its power to depart from a previous decision review it and if the headnote correctly states the decision of the House, at least limit its application to cases where the title to foreign land is involved. They also contend that the decision does not and should not be interpreted as applying to a claim based on a conspiracy entered into in this country to procure the commission of a trespass abroad for damages made against defendants within the jurisdiction. Finally, they say, that this decision does not operate as a bar to their claim for damages and an injunction insofar as it relates to the contents of the hotels.

A number of interesting questions were fully argued; in particular whether the courts of this country should and can have regard to legislation of the Turkish Federated State of Cyprus when the Foreign Office in response to an enquiry by May J has certified that Her Majesty's Government do not recognise the administration established under that name and do not recognise that administration as being the government of an independent de facto sovereign state. But it is not necessary to reach a conclusion on them, and on whether the consent order of Peter Pain J releases the respondent from liability in respect of conspiracy to effect trespasses to the hotels if the decision in the *Mocambique* case is an effective bar to that claim and is adhered to.

In that case the Mocambique company sought a declaration of title to lands in South Africa, damages for trespass and an injunction. The Divisional Court held that the court would not entertain the action insofar as it claimed a declaration of title and Wright J, delivering the judgment of the court, said ([1892]2 QB 358 at 368) that, assuming that there was jurisdiction in this country to try an action for damages for trespass to foreign lands where no question of title was raised 'it would seem that, when an issue of title is directly raised ... the court must be as incompetent to try that issue as it is to try an action directly brought for the recovery of the land'.

In the Court of Appeal there was a division of opinion. Lord Esher MR ([1892] 2 QB 358 at 393) observed that the claim for a declaration of title had been persisted in (though the report of the case ([1892] 2 QB 358 at 385) states that it was abandoned in the course of the argument) and that Sir Henry James QC for the appellant had put forward an alternative argument that as the claim was for damages only in respect of an intrusion on the plaintiff's possessory title, the action was only in personam and transitory as on the view of the case it did not raise any question of title to land. He held ([1892] 2 QB 358 at 398) that an action for trespass to lands abroad could not be entertained in an English court. Fry and Lopes LJJ were of the contrary opinion.

In this House Sir Henry James QC sought to establish three propositions: (1) the Queen's courts have jurisdiction over all persons within the realm; (2) those courts are open to all suitors who can enforce the jurisdiction against all subjects against whom personally effectual relief can be given; and (3) all personal actions can be maintained if the defendants are within the jurisdiction, and that an action for trespass is a personal action. Lord Herschell LC referred to Lord Mansfield's observations in *Mostyn v Fabrigas* in which he said that he had awarded damages for trespass abroad. Lord Herschell LC pointed out that in *Doulson v Matthews*, an action for

trespass to land in Canada, these decision of Lord Mansfield were not followed, Buller, J, delivering the judgment of the court, saying ((1792) 4 Term Rep 503 at 504):

> 'It is now too late for us to inquire whether it were wise or politic to make a distinction between transitory and local actions: it is sufficient for the Courts that the law has settled the distinction, and that an action *quare clausum fregit* is local. We may try actions here which are in their nature transitory, though arising out of a transaction abroad, but not such as are in their nature local.'

Lord Herschell LC also referred to the judgment of Willis J in *London Corpn v Cox* ((1867) LR 2 HL 239 at 261) and in *Phillips v Eyre* ((1870) LR 6 QB 1 at 28), when Willes J said that there was no jurisdiction here to try actions for trespass to land abroad and held that such an action was not maintainable. In his view ([1893] AC 602 at 629, [1891-4] All ER Rep 640 at 650) 'the grounds on which the courts have hitherto refused to exercise jurisdiction in actions of trespass to lands situate abroad were substantial'. I can find nothing in his speech to support the conclusion that he held that the action in the *Mocambique* case was not maintainable because title was involved. The division of opinion in the Court of Appeal was on whether or not an action for trespass to foreign lands was justiciable in the courts of this country, and that was the question this House had to decide. As I read Lord Hershchell LC's speech it was clearly his view that the courts of this country have not and never had exercised jurisdiction in relation to such claims. In Lord Halsbury's opinion the judgment of Lord Esher MR in the Court of Appeal was correct; Lord Macnaghten agreed with what had been said and Lord Morris agreed with the observations of Lord Herschell LC.

I see no ground for concluding that the headnote of the case in this House did not correctly state the decision, and if the decision stands, actions for trespass to foreign lands are not justiciable in the English courts whether or not any question of title is involved.

The rule in this case, as stated in the headnote and in Dicey and Morris's The Conflict of Laws[i] has been subjected to much criticism by distinguished persons. Cur attention was drawn to the criticisms and we were pressed to revise the rule. In my opinion it would not be right for us to exercise our power to do so. Buller J said in 1792[j] it was then too late to enquire whether it was wise or politic to distinguish between transitory and local actions. It is now in my opinion far too late for us to seek to do so. Questions of comity of nations may well be involved and if any change in the law is to be made it should only be made after detailed and full investgation of all the possible implications which we sitting judicially cannot make. In my view it must be left to Parliament to change the law if after full consideration that is thought to be desirable.

[i] (9th Edn, 1973), p 516, r 79

[j] *Doulson v Matthews* (1792) 4 Term Rep 503 at 504

In my view the rule cannot be evaded by alleging conspiracy. To obtain damages the appellants must show that they have suffered loss as the result of it. They must show that a trespass to the hotels has been procured. Proof of their claim involves a proof of trespass to the land abroad and in my opinion this the courts of this country cannot try. As in my opinion the rule in the *Mocambique* case is correctly stated in the headnote to the report and in Dicey and Morris[k], it follows that that decision is a complete bar to the appellants' claim in relation to trespass to the hotels. In my view that decision should not be altered now by this House and it follows that those

[k] The Conflict of Laws (9th Edn, 1973), p 516, r 79

parts of the statement of claim which relate to the allegation of the conspiracy to effect trespasses into the hotels and the alternative claim relating to the hotels should be struck out on the ground that the court has no jurisdiction to hear them.

The rule in the *Mocambique* case however is no bar to the appellants' claim in relation to the contents of the hotels and that part of the statement of claim should stand.

LORD SALMON.

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Wilberforce. I agree with it and would allow the appeal to the extent to which he proposes. I also agree with his proposed order as to costs.

LORD FRASER OF TULLYBELTON.

My Lords, this appeal raises the important general question of whether the English courts have jurisdiction to entertain an action for damages for trespass to foreign land, in a case where no question of title to the land or of right to possess it is raised. The answer involves considering the decision of this House in *British South Africa Company v Companhia de Mocambique* ('the *Mocambique* case'), to ascertain whether it covered that question. If, as I think, for reasons to be explained in a moment, it did, then it is necessary to consider whether we ought now to depart from that decision, relying on the Practice Direction of 1966[l].

[l] *Note* [1966] 3 All ER 77, [1966] 1 WLR 1234

The generally received understanding of what was decided in the *Mocambique* case is summarised in Dicey and Morris's The Conflict of Laws[m] in branch (2) of r 79. Rule 79 is as follows:

[m] (9th Edn, 1973), p 516

'79. Subject to the Exceptions hereinafter mentioned, the court has no jurisdiction to entertain an action for (1) the determination of the title to, or the right to the possession of, any immovable situated out of England (foreign land); of (2) the recovery of damages for trespass to such immovable.'

It was stated, in almost exactly the same words, as r 53 in the third edition[n], the last edition for which Professor Dicey himself was responsible. None of the exceptions apply to the facts of this case. The rule virtually repeats the headnote of the report. But counsel for the appellants pressed us with the submission that the rule is stated too widely and that the decision in the *Mocambique* case was limited to cases in which the title to the foreign land was in issue, or at least where there was an issue as to the right of immediate possession of the land. In the *Mocambique* case itself the title to the land was in dispute, and when the action began the plaintiffs were claiming a declaration of title, although that claim was abandoned in the Court of Appeal ([1892] 2 QB 358 at 420) and it was not a live issue when the appeal reached the House of Lords.

[n] (1922), p 223

The leading speech in the House of Lords was made by Lord Herschell LC. It contains passages which leave room for some doubt to whether he was treating the dispute on title as part of the ground of decision: he referred to two decisions by Lord Mansfield relating to trespass to foreign land and commented ([1893] AC 602 at 624, [1891-4] All ER Rep 640 at 647; and see also pp 625, 626 and pp 648, 649 respectively) that in those cases 'no question of title to real property was in issue'. But a reading of the speech as a whole shows, in my opinion, that it was not intended to be limited to cases where

there was a dispute as to title. In the first paragraph of the speech Lord Herschell LC said ([1893] AC 602 at 617, [1891-4] All ER Rep 640 at 643): 'The principle question raised by this appeal is whether the Supreme Court of Judicature has jurisdiction to try an action to recover damages for a trespass to lands situate in a foreign country.' He made no mention of disputed title. Among the authorities on which he relied was *Doulson v Matthews*, where the Court of Queen's Bench did not follow Lord Mansfield's decisions on this point, and where Buller J said (4 Term Rep 503 at 504):

> 'It is now too late for us to inquire whether it were wise or politic to make a distinction between transitory and local actions: it is sufficient for the Courts that the law has settled the distinction, and that an action *quare clausum fregit* is local. We may try actions here which are in their nature transitory, though arising out of a transaction abroad, but not such as are in their nature local.'

Finally, he stated ([1893] AC 602 at 629, [1891-4] All ER Rep 640 at 650) his conclusion in general terms which exactly match the question stated at the beginning of his speech. Lord Halsbury also stated ([1893] AC 602 at 630, [1891-4] All ER Rep 640 at 651) what he described as 'the only real question which is in debate' in general terms not limited to cases where title was disputed. Similarly Lord Esher MR, who dissented in the Court of Appeal and whose view was upheld in the House of Lords, also stated the question for decision in the widest terms ([1892] 2 QB 358 at 394). In *The Tolten* the basis of the *Mocambique* case was considered and all three members of the Court of Appeal took the view that it was not limited to cases where title was disputed: see especially Cohen LJ ([1946] 2 All ER 372 at 388, 389, [1946] P 135 at 167-169). I am of the opinion that it is not possible now to distinguish the decision in the *Mocambique* case on the ground that it was so limited.

That decision, as interpreted in branch (2) of r 79 in Dicey and Morris[o] has been the subject of criticism from many sources. Counsel for the appellants submitted that the criticisms were well founded and that, if the decision could not be distinguished in the instant appeal, it should be departed from. The decision was based, as the speech of Lord Herschell LC clearly shows, on a historical distinction drawn in English law between local and transitory actions. Lord Herschell LC held that actions for trespass to land were local and that for that reason the English courts had no jurisdiction to try them if the land was outside England. No criticism was made in the argument before us of that historical explanation. The decision was criticised on the ground that, however historically correct it might be, it was illogical and was liable to produce injustice in practice. I recognise that there is force in these criticisms, and particularly in the criticism that it may lead to a plaintiff being left without a remedy. Indeed, the instant appeal is one where the plaintiffs, if they have no remedy in the English courts, will probably be left with no remedy at all.

[o] The Conflict of Laws (9th Edn, 1973), p 516

Those who seek to justify the rule on its merits, apart from its historical origin, have done so mainly on two grounds. The first is that it is 'a legitimate application or extension of the principle of effectiveness'[p], that is, the principle that a court has jurisdiction only over matters in which it can give an effective judgment. The second is that it is in accord with the comity of nations. Neither of these justifications seems to me wholly convincing. As regards effectiveness, a judgment awarding damages

[p] Dicey, The Conflict of Laws (3rd Edn, 1922), p 224

against a defendant is generally regarded as effective if the defendant is subject to the court's jurisdiction, because it can normally be enforced against him by order of the court. The effectiveness of the award has nothing to do with the ground on which it was made; an award of damages for trespass of foreign land is no less effective than an award of damages for any other wrong. Moreover the courts both in England and in Scotland have asserted jurisdiction in actions to enforce contracts relating to foreign land although enforcement can only be by indirect means: see *Penn v Lord Baltimore* and *Ruthven v Ruthven*. Actions of that sort seem to affect the foreign land itself hardly less than actions for damages for trespass to the land. So far as comity of nations is concerned, this may afford some support for the rule although I doubt whether r 79(2) represents one which is generally recognised by the international community. For example the comments on the French Civil Code that were brought to our attention were far from satisfying me that r 79(2) was in accordance with the law of France.

For these reasons I have serious doubt whether the law as laid down in the *Mocambique* case is either logical or satisfactory in its result. If the matter were free from authority, there would be much to be said for what counsel for the appellants suggested was the true rule to be extracted from the *Mocambique* case, videlicet that the English court has jurisdiction to entertain an action for damages for trespass to foreign land against a person within the jurisdiction in a case where title is not in dispute and where there is no real dispuite as to the plaintiff's right to possession of the land. But the matter is not free from authority and, in my opinion, this is not one on which it would be right for the House to depart from its earlier decisions. The main reason is that I do not think that the House in its judicial capacity has enough information to enable it to see the possible repercussions of making the suggested change in the law. One probable repercussion would be that, if the English courts were to have the wider jurisdiction of the suggested 'true rule', they might at the same time have to limit their new jurisdiction by applying it to a rule of forum non conveniens. Since *The Atlantic Star* and *MacShannon v Rockware Glass Ltd*, this might not be a revolutionary step, but it would nevertheless represent a consequential change in the law of some significance. There may well be other and more important repercussions. I would apply to this question the words of my noble and learned friend, Lord Simon of Glaisdale, in *Miliangos v George Frank (Textiles) Ltd* ([1975] 3 All ER 801 at 823, [1976] AC 443 at 480):

> '... I do not think that this is a "law reform" which should or can properly be imposed by judges; it is, on the contrary, essentially a decision which demands a far wider range of review than is available to courts following our traditional and valuable adversary system--the sort of review compassed by an interdepartmental committee.'

There are also other reasons. The law as stated in the *Mocambique* case was not new. It goes back at least as far as 1792 when *Doulson v Matthews*, was decided and it has been generally, though reluctantly, followed in the United States of America, Canada and Australia: see particularly the decision of Marshall CJ in *Livingston v Jefferson*. In a few American states the courts have declined to follow the *Mocambique* decision, but such cases seem to have been rare. Secondly, departure from the *Mocambique* rule would mean that the House of Lords in its judicial capacity would be assuming

a new jurisdiction for the English courts: see *Albert v Fraser Companies Ltd* and *Jacobus v Colgate*. That is not a step that I think we would be justified in taking, at least in this case where Parliament could have made an opportunity for altering or modifying the law when dealing with jurisdiction in the Supreme Court of Judicature (Consolidation) Act 1925. Thirdly, we were told that a new European convention dealing with jurisdiction of national courts was in preparation so that litigation is likely to be required before long.

The result is that if this had been an action for damages for, or for an injunction against, trespass to immovable property in Cyprus, it would in my opinion have failed. It is therefore unnecessary to consider the interesting questions raised as to the legal status of the Turkish Federated State of Cyprus.

In my opinion it makes no difference that the action is based on allegations not of actual trespass in Cyprus but of a conspiracy in England to effect such trespass.

The statement of claim at para 6 is as follows:

> 'Since at least June 1976 (if not earlier) to the date hereof the first defendants and the second defendant have conspired together, and with others unknown, to effect trespasses to the said hotels [and contents], and or have conspired together as aforesaid to obtain advantage for themselves by the unauthorised use of the plaintiffs' said property.'

The words in square brackets do not appear in the statement of claim as reproduced, but counsel for the appellants explained that they had been omitted per incuriam and no objection was raised by counsel for the respondent to the words being read in.

The first thing that strikes one about that paragraph is that it is concerned only with past events, 'Since at least June 1976 ... to the date hereof'. It contains no averment of a continuing wrong or of a wrong that is threatened in the future. Unless therefore, it is to be read in a sense wider than the words themselves bear, the averments would not justify an injunction. Further, the effect of the paragraph seems to be to aver two conspiracies, one between the first and second defendants and 'others unknown' to effect trespasses, and the second between the defendants to obtain advantage for themselves by unauthorised use of the plaintiffs' property. But the particulars that follow do not fit well into that framework. They consist of allegations in paras (i) and (ii) that the first defendants have had dealings with certain named persons (but with no mention of the second defendant) and in paras (iii), (iv) and (v) that the second defendant has counselled and procured other persons to trespass on the plaintiffs' property as well as doing other, and apparently inoffensive acts (but with no mention of the first defendants). Finally para 7 of the statement of claim contains a bald averment that 'By reason of the aforesaid the plaintiffs have and will suffer damage'. But there is nothing to show how such damage could have been caused or could in future be caused to the plaintiffs in England apart from actual trespass in Cyprus. In my opinion there is no proper averment of a conspiracy between the defendants even in the past, still less of a continuing one, not (assuming that there is such a conspiracy) of how damage has been caused or will be caused by it in England. The case of conspiracy is simply an attempt to dress up the substantive claim, which is for trespass, in a different guise and in my opinion the attempt fails.

Finally there is the claim based on trespass to chattels. The respondent's original answer to this claim was that it could not succeed because the appellants were not in actual possession of the chattels. But counsel for the respondent in his reply conceded that there was some authority that a right to immediate possession was enough to found a claim for trespass to chattels and that he therefore could not maintain that the claim should be struck out now. The same result follows from the appellant's

argument to the effect that they have alleged facts which amount to conversion of the movables and that they are entitled to maintain a claim for conversion although they have not stated the legal inference from the facts alleged. This argument depends on English rules of pleading and with regard to it I gratefully adopt the reasoning of my noble and learned friend, Lord Wilberforce, who is so much more familiar with these rules than I am. The *Mocambique* decision has no application to chattels. Moreover there is direct authority for distinguishing within a single action between a claim in respect of trespass to movables situated abroad (where the jurisdiction of the English courts depends on ordinary principles) and a claim in respect of trespass to foreign land (where the English courts have no jurisdiction): see *Skinner v East India Co* ((1666) 6 State Tr 710 at 719) where the judges reported to the House of Lords as follows:

> 'That the matters touching the taking away of the petitioner's ship and goods, and assaulting of his person, notwithstanding the same were done beyond the seas, might be determined upon His Majesty's ordinary courts at Westminster; and as to the dispossessing him of his house and island, that he was not relievable in any ordinary court of law.'

The decision of the Supreme Court of New Brunswick in *Albert v Fraser Companies Ltd*, that they had no jurisdiction in a claim for damages either to real *or personal* property in another province was made on special facts in respect that the two branches of the claim were very closely connected to one another.

I agree that the appeal should be allowed to the extent proposed by my noble and learned friend, Lord Wilberforce.

LORD KEITH OF KINKEL.

My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Wilberforce. I agree with it and with the order which he proposes.

Order varied accordingly.

Solicitors: Lovell, White & King (for the appellants); Theodore Goddard & Co (for the respondent).

Mary Rose Plummer Barrister.

[1978] 2 All ER 1168 at 1185