

Owners of Cargo lately laden on board ship or vessel Eleftheria v The Eleftheria (Owners), The Eleftheria

[1970] P 94, [1969] 2 All ER 641, [1969] 2 WLR 1073, [1969] 1 Lloyd's Rep 237, 113 Sol Jo 407

Court: P, D and Admlty

Judgment Date: circa 1970

Catchwords & Digest

CONFLICT OF LAWS - PROCEDURE - STAY OF ACTIONS - LIS ALIBI PENDENS - STAY OF PROCEEDINGS - WHERE NO FOREIGN SUIT INSTITUTED - ACTION IN BREACH OF AGREEMENT TO REFER TO FOREIGN COURT--WHAT COURT MAY CONSIDER

Where plaintiffs sue in England in breach of an agreement to refer disputes to a foreign court, and defendants apply for a stay under Supreme Court of Judicature (Consolidation) Act 1925 s 41, the English court assuming the claim to be otherwise within its jurisdiction, is not bound to grant a stay but has a discretion whether to do so or not. The discretion should be exercised by granting a stay unless strong cause for not doing so is shown. The burden of proving such strong cause is on plaintiffs. In exercising its discretion, the court should take into account all the circumstances of the particular case. In particular, but without prejudice to taking into account all the circumstances of the particular case, the following matters, where they arise, may properly be regarded: (i) in what country the evidence on the issues of fact is situated, or more readily available, and the effect of that on the relative convenience and expense of trial as between the English and foreign courts; (ii) whether the law of the foreign court applies and, if so, whether it differs from English law in any material respects; (iii) with what country either party is connected and how closely; (iv) whether defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages; (v) whether plaintiffs would be prejudiced by having to sue in the foreign court because they would, (a) be deprived of security for that claim, (b) be unable to enforce any judgment obtained, (c) be faced with a time-bar not applicable in England, or (d) for political, racial, religious or other reasons be unlikely to get a fair trial.

Cases referring to this case

Annotations: All Cases **Court:** ALL COURTS

Sort by: Judgment Date (Latest First)

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Dicta of Brandon J Applied	889457 Alberta Inc v Katanga Mining Ltd	[2008] EWHC 2679 (Comm), [2009] 1 BCLC 189, [2008] All ER (D) 61 (Nov)	Comm Ct	05/11/2008	CaseSearch Entry
Considered	Import Export Metro Ltd v Compania Sud Americana De Vapores SA	[2003] EWHC 11 (Comm), [2003] 1 All ER (Comm) 703, [2003] 1 Lloyd's Rep 405, [2003] All ER (D) 334 (Jan)	Comm Ct	23/01/2003	CaseSearch Entry
Applied	Carvalho v Hull, Blyth (Angola) Ltd	[1979] 3 All ER 280, [1979] 1 WLR 1228, [1980] 1 Lloyd's Rep 172, 123 Sol Jo 522	CA	circa 1979	CaseSearch Entry