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Judgment: approved by the Court for handing down
*(subject to editorial corrections)** | Delivered: **7/3/07**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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Between:

BRIAN BATEY

Plaintiff/ Appellant;

-and-

TODD ENGINEERING (STAFFS) LIMITED

Defendant/Respondent;

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HIGGINS L J

[1] This is an appeal against the order of Master McCorry whereby he ordered in a reserved judgment that this action by the plaintiff/appellant (the plaintiff) against the defendant/respondent (the respondent) 'be stayed on grounds of forum non conveniens and that the plaintiff pay to the defendant the costs of this application'. By a writ of summons issued on 14 March 2005 the plaintiff claims damages for personal injuries, loss and damage sustained by the plaintiff by reason of the negligence and breach of statutory duty of the defendant in and about the employment of the plaintiff at premises situated at Newtownabbey in the County of Antrim. Liability was admitted by letter in November 2002 and part payment made thereafter in England. The only issue in the proceedings is the amount of compensation to be paid to the plaintiff.

[2] The plaintiff resides at Handsacre near Rugley in England. The defendant company is based in Staffordshire, England, and is engaged in the design, manufacture and installation of paint spray booths. The plaintiff was employed as an installation fitter. The defendant has customers in various locations throughout the United Kingdom and installation fitters travel to these locations to install spray booths. On 25 March 2003 the plaintiff was at premises in Newtownabbey and involved in the installation of a paint spray

booth when he was injured. The plaintiff was engaged in the hanging of a roller door when a fellow employee caused the door to fall upon the plaintiff. He was taken to the Royal Victoria Hospital in Belfast where he remained for the next three weeks. He then returned to England where his treatment was continued at the Stafford District General Hospital. Treatment continues in England with the possibility of further surgery.

[3] The defendant instructed solicitors in England who in turn engaged solicitors in Northern Ireland who entered an appearance on 25 January 2006. The Statement of Claim was served on 24 March 2006. It is clear from the exhibited correspondence that the English solicitors engaged on behalf of the plaintiff will be carrying out the investigatory or preparatory work as well as taking statements, organising discovery, arranging medical appointments and obtaining records. The plaintiff has disclosed medical reports from two consultants one based in Leeds and the other in Wolverhampton. The defendant has engaged a consultant in Wolverhampton. The plaintiff has suffered significant injuries and it is alleged in the Statement of Claim that he has required ongoing care and assistance, which requirement will continue into the future. It is alleged also that his home in England may require modification and improvement. Thus care experts are likely to be engaged on both sides with the necessity for domiciliary visits. Comparative legal costs and travel expenses were relied on.

[4] It was submitted by Mr Spence who appeared on behalf of the defendant that the appropriate jurisdiction was the courts of England and Wales. The case has no association with Northern Ireland other than the bare fact that the plaintiff sustained his injuries here and trial of his action would be much less inconvenient for the witnesses if held in England and Wales. In addition travel expenses might be saved. He relied on the decision of the House of Lords in Spiliada Maritime Corp. v Cansulex Ltd 1987 1 A.C. 640. Mr McAteer on behalf of the plaintiff submitted that there is a presumption that action lies in the jurisdiction in which a tort is committed and factors such as the plaintiff's residence and the location of medical treatment did not outweigh that presumption. He referred to Cordoba Shipping Co. Ltd. v National State Bank, Elizabeth, New Jersey 1984 2 Lloyds Reports 91 (The 'Albaforth').

[5] The locus classicus of the principle applicable in an application to stay proceedings on grounds of forum non conveniens is the speech of Lord Goff in Spiliada Maritime Corp. v Cansulex Ltd 1987 1 A.C. 640 at page 466. In that case it was alleged that corrosion was caused to a chartered Liberian owned vessel when it was loaded in Vancouver, British Columbia, with sulphur bound for ports in India. Leave to serve proceedings on the shippers in Canada was granted by Staughton J, in the High Court in London, on the ground that the proceedings involved breach of a contract governed by English law. The Court of Appeal set aside the writ on the ground that it was

impossible to conclude that the English court was distinctly more suitable for the ends of justice. The shipowners appealed to the House of Lords who allowed the appeal. It was held that the determination whether a case was a proper one for service out of the jurisdiction required the court to apply the same principles as in an application to stay proceedings on the ground of forum non conveniens. Thus the court had to identify the forum in which the case could most suitably be tried for the interests of all the parties and for the ends of justice. Having reviewed the authorities Lord Goff, with whom the other members of the House agreed, set out a summary of the law and its application between pages 474 and 484. At page 474 he identified the fundamental principle in these terms -

> "In cases where jurisdiction has been founded as of right, i.e. where in this country the defendant has been served with proceedings within the jurisdiction, the defendant may now apply to the court to exercise its discretion to stay the proceedings on the ground which is usually called forum non conveniens. That principle has for long been recognised in Scots law; but it has only been recognised comparatively recently in this country. In The Abidin Daver [1984] A.C. 398, 411, Lord Diplock stated that, on this point, English law and Scots law may now be regarded as indistinguishable. It is proper therefore to regard the classic statement of Lord Kinnear in Sim v. Robinow (1892) 19 R. 665 as expressing the principle now applicable in both jurisdictions. He said, at p. 668: 'the plea can never be sustained unless the court is satisfied that there is some other tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice'."

[6] Lord Goff then went on to emphasise that the application of the principle did not involve a consideration of what was convenient for the parties, rather what was the most suitable or appropriate jurisdiction. At page 476 he summarised the law in these terms -

> "(a) The basic principle is that a stay will only be granted on the ground of forum non conveniens where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.

(b) As Lord Kinnear's formulation of the principle indicates, in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay (see, e.g., the Société du Gaz case, 1926 S.C. (H.L.) 13, 21, per Lord Sumner; and Anton, Private International Law (1967) p. 150). It is however of importance to remember that each party will seek to establish the existence of certain matters which will assist him in persuading the court to exercise its discretion in his favour, and that in respect of any such matter the evidential burden will rest on the party who asserts its existence. Furthermore, if the court is satisfied that there is another available forum which is prima facie the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country (see (f), below).

(c) The question being whether there is some other forum which is the appropriate forum for the trial of the action, it is pertinent to ask whether the fact that the plaintiff has, ex hypothesi, founded jurisdiction as of right in accordance with the law of this country, of itself gives the plaintiff an advantage in the sense that the English court will not lightly disturb jurisdiction so established..... In my opinion, the burden resting on the defendant is not just to show that England is not the natural or appropriate forum for the trial, but to establish that there is another available forum which is clearly or distinctly more appropriate than the English forum. In this way, proper regard is paid to the fact that jurisdiction has been founded in England as of right (see MacShannon's case [1978] A.C. 795, per Lord Salmon); and there is the further advantage that, on a subject where comity is of importance, it appears that there will be a broad consensus among major common law jurisdictions. I may add that if, in any case, the connection of the defendant with the English forum is a fragile one (for example, if he is served with proceedings during a short visit to this country), it should be all the easier for him to prove that there is another clearly more appropriate forum for the trial overseas.

(d) Since the question is whether there exists some other forum which is clearly more appropriate for the trial of the action, the court will look first to see what factors there are which point in the direction of another forum. These are the factors which Lord Diplock described, in MacShannon's case [1978] A.C. 795, 812, as indicating that justice can be done in the other forum at "substantially less inconvenience or expense." Having regard to the anxiety expressed in your Lordships' House in the Société du Gaz case, 1926 S.C. (H.L.) 13 concerning the use of the word "convenience" in this context, I respectfully consider that it may be more desirable, now that the English and Scottish principles are regarded as being the same, to adopt the expression used by my noble and learned friend, Lord Keith of Kinkel, in The Abidin *478 Daver [1984] A.C. 398, 415, when he referred to the "natural forum" as being "that with which the action had the most real and substantial connection." So it is for connecting factors in this sense that the court must first look; and these will include not only factors affecting convenience or expense (such as availability of witnesses), but also other factors such as the law governing the relevant transaction (as to which see Crédit Chimique v. James Scott Engineering Group Ltd., 1982 S.L.T. 131), and the places where the parties respectively reside or carry on business.

(e) If the court concludes at that stage that there is no other available forum which is clearly more appropriate for the trial of the action, it will ordinarily refuse a stay; see, e.g., the decision of the Court of Appeal in European Asian Bank A.G. v. Punjab and Sind Bank [1982] 2 Lloyd's Rep. 356. It is difficult to imagine circumstances where, in such a case, a stay may be granted.

(f) If however the court concludes at that stage that there is some other available forum which prima facie is clearly more appropriate for the trial of the action, it will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted. In this inquiry, the court will consider all the circumstances

> of the case, including circumstances which go beyond those taken into account when considering connecting factors with other jurisdictions. One such factor can be the fact, if established objectively by cogent evidence, that the plaintiff will not obtain justice in the foreign jurisdiction; see the The Abidin Daver [1984] A.C. 398, 411, per Lord Diplock, a passage which now makes plain that, on this inquiry, the burden of proof shifts to the plaintiff. How far other advantages to the plaintiff in proceeding in this country may be relevant in this connection, I shall have to consider at a later stage."

[7] Thus the court should consider all the circumstances of the case and the factors which demonstrate, or not, a connection with one jurisdiction or another, the burden of proof being on the applicant.

[8] In the Albaforth the shipowners claimed damages against the defendant bank for negligent misstatement relating to a banker's status report on guarantors provided for the charter of the ship. The charter was negotiated between brokers in London acting on behalf of the shipowner and the charterer. The bank in New Jersey sent a favourable report on the guarantors by telex to the shipowners' broker in London. Parker J granted the shipowners leave to serve the writ out of the jurisdiction. The defendants applied to set aside the order and Staughton J granted that application. He held that the alleged tort was committed within the jurisdiction and that the shipowners had made out an arguable case that the tort had been committed by the Bank. However he exercised his discretion against service out of the jurisdiction on grounds relating to other proceedings and arbitration already commenced in America. The shipowners appealed. The Court of Appeal (Ackner and Goff L.JJ) held that Staughton J was entitled to conclude that the alleged tort was committed within the jurisdiction but that he was in error in exercising his discretion against service of the writ out of the jurisdiction. At page 94 Ackner LJ said –

> "The learned Judge's attention was not invited to the Privy Council case of Distillers Co. (Biochemicals) Ltd. v. Laura Ann Thompson, [1971] A.C. 458. That was a case in which an English company, the manufacturers of a drug marketed under the name of 'Distaval' which contained the drug 'Thalidomide', had sold the drug in Australia, as a result of which it was alleged that a woman who was pregnant suffered, as did the child to whom she subsequently gave birth. She sought to sue Distillers in Australia on the basis that they committed negligence by virtue of their failure, when they sold the drug, to give a

warning of its dangerous characteristic. It was held that, since the complaint that the English company had failed to warn the mother of the dangers of the drug occurred when she purchased the drug in New South Wales, her cause of action arose within that jurisdiction, in giving the opinion of the Privy Council Lord Pearson said:

> . . . The defendant has no major grievance if he is sued in the country where most of the ingredients of the cause of action against him took place . . . [-- (467D).] But when the question in which country's courts should have jurisdiction to try the action, the approach should be different: the search is for the most appropriate court to try the action, and the degree of connection between the cause of action and the country concerned should be the determining factor . . . [-- (467F).] it is manifestly just and reasonable that a defendant should have to answer for his wrongdoing in the country where he did the wrong . . . [468D]. These quotations make it clear that the jurisdiction in which a tort has been committed is prima facie the natural forum for the determination of the dispute.
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> England is thus the natural forum for the resolution of this dispute. The law is certain and it is therefore only the facts which will be in issue, whereas in New Jersey there will be argument on the law. Even though it is still probable it will be determined to be the same as English law, time and money will be expended in establishing this'."

[9] Robert Goff LJ in his judgment having referred to the Distillers and Diamond cases said -

> "Now it follows from those decisions that, where it is held that a Court has jurisdiction on the basis that an alleged tort has been committed within the

> jurisdiction of the Court, the test which has been satisfied in order to reach that conclusion is one founded on the basis that the Court, so having jurisdiction, is the most appropriate Court to try the claim, where it is manifestly just and reasonable that the defendant should answer for his wrongdoing. This being so, it must usually be difficult in any particular case to resist the conclusion that a Court which has jurisdiction on that basis must also be the natural forum for the trial of the action. If the substance of an alleged tort is committed within a certain jurisdiction, it is not easy to imagine what other facts could displace the conclusion that the Courts of that jurisdiction are the natural forum. Certainly, in the present case, I can see no factors which could displace that conclusion. With all respect, I do not consider that the factors which impressed the learned Judge are capable of achieving that result.

[10] Both the Albaforth and Spiliada Maritime Corporation v Cansulex Ltd were cases concerning service of proceedings outside the jurisdiction. The latter case was heard in July 1986 though the Albaforth, which was heard in May 1984, was not referred to in the speeches or cited in argument. The cause of action in Spiliada was breach of contract whereas in the Albaforth it was in tort. This distinction apart the issue remained whether the decision in Spiliada had altered the ration of the decision in the Albaforth. This was considered in Berezovsky v Forbes Inc. (No 1) 2000 1WLR 1004. The facts were that an American business magazine published an article alleging that the plaintiff a prominent Russian businessman was in fact a leader of organised crime and corruption in that country. Sales of that issue of the magazine amounted to approximately 785,000 in the United States and Canada, 1,900 in England and Wales and 13 in Russia. The plaintiff who was a frequent visitor to England for the purposes of business sought to issue defamation proceedings in the High Court against the defendants, the editor and publishers of the magazine, claiming damages restricted to the injury to his reputation in England. The Master gave the plaintiff leave to serve a writ out of the jurisdiction pursuant to R.S.C., Ord. 11, rr. 1(1)(f), 4(2). A writ for libel was accordingly served on the defendants in New York. The defendants applied by summons to a judge of the Queen's Bench Division for the writ to be set aside and the actions dismissed or stayed under R.S.C., Ord. 12, r. 8 on the ground that England was not the most appropriate jurisdiction for the trial of the action. The judge found that the plaintiff's connections with the jurisdiction were tenuous, that they had failed to establish that England and Wales was the most appropriate jurisdiction for the trial of their actions, and accordingly stayed the proceedings. On the plaintiff's appeal, the Court of Appeal admitted new

evidence to the effect that the article was known to executives of financial institutions and had deterred them from entering into or continuing London-based negotiations with companies with which the plaintiffs were associated. The court held that the judge had failed to take account of authority to the effect that, prima facie, England was the appropriate forum for the trial of any substantial complaint arising out of the English circulation of a foreign publication and that such failure entitled the court to make a fresh exercise of discretion. It then held that since both plaintiff's connections with England were in fact significant they had a substantial complaint such as gave them a strong prima facie case for a trial in England, and since their connections with the United States were slight and a trial in Russia, though the place of their strongest connection, would nevertheless be unsuitable, England was the appropriate jurisdiction for the trial of the action. An appeal by the defendants to the House of Lords was dismissed it being held -

> "that the publication in England of an internationally disseminated libel constituted a separate tort so as to permit the bringing of an action in England in respect of the publication therein; that where, in such a case, the publisher was outside England so as to require leave to serve the writ outside the jurisdiction under R.S.C., Ord. 11, the burden was on the plaintiff to show that England was clearly the appropriate forum in which the case should be tried in the interests of all the parties and the ends of justice; but that, consistently with that test, regard was to be had to the principle that the jurisdiction in which a tort was committed was prima facie the natural forum for the dispute."

[11] In the leading opinion Lord Steyn set out a number of questions the fourth of which was 'Did the Court of Appeal apply the Spiliada test correctly?' To that question he said -

> "In the Court of Appeal counsel for Forbes submitted 'that the correct approach is to treat multi-jurisdiction cases like the present as giving rise to a single cause of action and then to ascertain where the global cause of action arose.' In aid of this argument he relied by analogy on the experience in the United States with the Uniform Single Publication Act which provides, in effect that, in respect of a single publication only one action for damages is maintainable: see also William L. Prosser, 'Interstate Publication' (1953) 51 Michigan L. Rev. 959 and the American Law Institute, Restatement of the Law, Torts, 2d (1977), section

577A. The Uniform Single Publication Act does not assist in selecting the most suitable court for the trial: it merely prevents a multiplicity of suits. There is no support for this argument in English law. It is contrary to the long established principle of English libel law that each publication is a separate tort. Moreover, it is inconsistent with the policy underlying the acceptance by the European Court of Justice in Shevill v. Presse Alliance S.A. (Case C-68/93) [1995] 2 A.C. 18, admittedly a Convention case, that separate actions in each relevant jurisdiction are in principle permissible: see also Shevill v. Presse Alliance S.A. [1996] A.C. 959 and Reed and Kennedy, 'International torts and Shevill: the ghost of forum shopping yet to come' [1996] L.M.C.L.Q. 108. And, as Hirst L.J. observed, the single cause of action theory, if adopted by judicial decision in England, would disable a plaintiff from seeking an injunction in more than one jurisdiction. In the context of the multiplicity of state jurisdictions in the United States there is no doubt much good sense in the Uniform Single Publication Act. But the theory underpinning it cannot readily be transplanted to the consideration by English courts of trans-national publications. Rightly, the Court of Appeal rejected this submission. In oral argument counsel for Forbes made clear that he was not pursuing such an argument before the House.

On appeal to the House counsel for Forbes approached the matter differently. The English law of libel has three distinctive features, viz. (1) that each communication is a separate libel: Duke of Brunswick v. Harmer (1849) 14 Q.B. 185 and McLean v. David Syme & Co. Ltd. (1970) 92 W.N. (N.S.W.) 611; (2) that publication takes place where the words are heard or read: Bata v. Bata [1948] W.N. 366; Lee v. Wilson and Mackinnon (1934) 51 C.L.R. 276; and (3) that it is not necessary for the plaintiff to prove that publication of defamatory words caused him damage because damage is presumed: Ratcliffe v. Evans [1892] 2 Q.B. 524, 529, per Bowen L.J. The rigour of the application of these rules is mitigated by the requirement that in order to establish jurisdiction a tort committed in the jurisdiction must be a real and substantial one: Kroch v. Rossell et Compagnie Société des personnes... Responsibilité Limitée [1937] 1 All E.R. 725. On the

findings of fact of the Court of Appeal, which I have accepted, it is clear that jurisdiction under Ord. 11, r. 1(1)(f) is established and counsel accepted that this is so. But counsel put forward the global theory on a reformulated basis. He said that when the court, having been satisfied that it has jurisdiction, has to decide under Order 11 whether England is the most appropriate forum "the correct approach is to treat the entire publication--whether by international newspaper circulation, trans-border or satellite broadcast or Internet posting--as if it gives rise to one cause of action and to ask whether it has been clearly proved that this action is best tried in England." If counsel was simply submitting that in respect of trans-national libels the court exercising its discretion must consider the global picture, his proposition would be uncontroversial. Counsel was, however, advancing a more ambitious proposition. He submitted that in respect of trans-national libels the principles enunciated by the House in the Spiliada case [1987] A.C. 460 should be recast to proceed on assumption that there is in truth one cause of action. The result of such a principle, if adopted, will usually be to favour a trial in the home courts of the foreign publisher because the bulk of the publication will have taken place there. Counsel argued that it is artificial for the plaintiffs to confine their claim to publication within the jurisdiction. This argument ignores the rule laid down in Diamond v. Sutton (1866) L.R. 1 Ex. 130, 132 that a plaintiff who seeks leave to serve out of the jurisdiction in respect of publication within the jurisdiction is guilty of an abuse if he seeks to include in the same action matters occurring elsewhere: see also Eyre v. Nationwide News Pty. Ltd. [1967] N.Z.L.R. 851. In any event, the new variant of the global theory runs counter to well established principles of libel law. It does not fit into the principles so carefully enunciated in Spiliada. The invocation of the global theory in the present case is also not underpinned by considerations of justice. The present case is a relatively simple one. It is not a multi-party case: it is, however, a multi-jurisdictional case. It is also a case in which all the constituent elements of the torts occurred in England. The distribution in England of the defamatory material was significant. And the plaintiffs have reputations in

England to protect. In such cases it is not unfair that the foreign publisher should be sued here. Pragmatically, I can also conceive of no advantage in requiring judges to embark on the complicated hypothetical enquiry suggested by counsel. I would reject this argument.

Counsel next put forward a more orthodox argument. He acknowledged that the Court of Appeal invoked the well known principles laid down in the Spiliada case [1987] A.C. 460, 474D, 484E. Hirst L.J. correctly stated that the court must identify the jurisdiction in which the case may be tried most suitably or appropriately for the interests of all the parties and the ends of justice. Hirst L.J. [1999] E.M.L.R. 278, 293 also emphasised that in an Order 11 case the burden of proof rests upon the plaintiff to establish that the English jurisdiction clearly satisfies this test. So far there can be no criticism of the approach of the Court of Appeal. But counsel submitted that Hirst L.J. fell into error by relying on a line of authority which holds that the jurisdiction in which a tort has been committed is prima facie the natural forum for the determination of the dispute. The best example is Cordoba Shipping Co. Ltd. v. National State Bank, Elizabeth, New Jersey (The Albaforth) [1984] 12 Lloyd's Rep. 91 where the Court of Appeal considered a claim founded on a negligent mis-statement in a status report by a bank relating to the credit of a guarantor of a company's obligations under a charter party. The statement was contained in a telex sent by the bank from New York to shipowners in London. At first instance the judge set aside leave to serve out of the jurisdiction. The Court of Appeal allowed the appeal. Ackner L.J. (subsequently Lord Ackner) observed, at p. 94:

> 'the jurisdiction in which a tort has been committed is prima facie the natural forum for the determination of the dispute. England is thus the natural forum for the resolution of this dispute.'

Goff L.J. (who became Lord Goff of Chieveley) observed, at p. 96:

> 'Now it follows from those decisions that, where it is held that a court has jurisdiction on the basis that an alleged tort has been committed within the jurisdiction of the court, the test which has been satisfied in order to reach that conclusion is one founded on the basis that the court, so having jurisdiction, is the most appropriate court to try the claim, where it is manifestly just and reasonable that the defendant should answer for his wrongdoing. This being so, it must usually be difficult in any particular case to resist the conclusion that a court which has jurisdiction on that basis must also be the natural forum for the trial of the action. If the substance of an alleged tort is committed within a certain jurisdiction, it is not easy to imagine what other facts could displace the conclusion that the courts of that jurisdiction are the natural forum.'

There is also direct support for this approach before and after The Albaforth: see Distillers Co. (Biochemicals) Ltd. v. Thompson [1971] A.C. 458, 468E, per Lord Pearson; Metall und Rohstoff A.G. v. Donaldson Lufkin & Jenrette Inc. [1990] 1 Q.B. 391, a Court of Appeal decision subsequently overruled in Lonrho Plc. v. Fayed [1992] 1 A.C. 448 on other aspects; and Schapira v. Ahronson [1999] E.M.L.R. 735. The express or implied supposition in all these decided cases is that the substance of the tort arose within the jurisdiction. In other words the test of substantiality as required by Kroch v. Rossell [1937] 1 All E.R. 725 was in each case satisfied. Counsel for Forbes argued that a prima facie rule that the appropriate jurisdiction is where the tort was committed is inconsistent with the Spiliada case [1987] A.C. 460. He said that Spiliada admits of no presumptions. The context of the two lines of authority must be borne in mind. In Spiliada the House examined the relevant questions at a high level of generality. The leading judgment of Lord Goff of Chieveley is an essay in synthesis: he explored and

explained the coherence of legal principles and provided guidance. Lord Goff of Chieveley did not attempt to examine exhaustively the classes of cases which may arise in practice, notably he did not consider the practical problems associated with libels which cross national borders. On the other hand, the line of authority of which The Albaforth is an example was concerned with practical problems at a much lower level of generality. Those decisions were concerned with the bread and butter issue of the weight of evidence. There is therefore no conflict. Counsel accepted that he could not object to a proposition that the place where in substance the tort arises is a weighty factor pointing to that jurisdiction being the appropriate one. This illustrates the weakness of the argument. The distinction between a prima facie position and treating the same factor as a weighty circumstance pointing in the same direction is a rather fine one. For my part the Albaforth line of authority is well established, tried and tested, and unobjectionable in principle. I would hold that Hirst L.J. correctly relied on these decisions.

Next counsel for Forbes argued that, in any event, on conventional Spiliada principles Russia, or the United States, are more appropriate jurisdictions for the trial of the action. This submission must be approached on the basis that the plaintiffs have significant connections with England and reputations to protect here. It is, of course, true that the background to the case is events which took place in Russia. Counsel for Forbes argued that evidence in support of a defence justification is to be found in Russia. Popplewell J. and Hirst L.J. concluded that in the absence of a particularised plea of justification to give no or little weight to this factor. Despite the valiant attempts by counsel for Forbes to argue that there is an evidential basis for a plea of justification, I remain unpersuaded. A full examination of the merits and demerits of the charges and counter-charges must, however, await the trial of the action. It is true that Forbes may also be able to plead qualified privilege on the basis of the law as stated by the House of Lords in Reynolds v. Times Newspapers Ltd. [1999] 3 W.L.R. 1010. But the evidence of such a plea would presumably largely be in the United States where the reporters are based and

> where the documents are. In any event, there is nothing to indicate the contrary. Moreover, there are two substantial indications pointing to Russia not being the appropriate jurisdiction to try the action. The first is that only 13 copies were distributed in Russia. Secondly, and most importantly, on the evidence adduced by Forbes about the judicial system in Russia, it is clear that a judgment in favour of the plaintiffs in Russia *1015 will not be seen to redress the damage to the reputations of the plaintiffs in England. Russia cannot therefore realistically be treated as an appropriate forum where the ends of justice can be achieved. In the alternative counsel for Forbes argued that the United States is a more appropriate jurisdiction for the trial of the action. There was a large distribution of the magazine in the United States. It is a jurisdiction where libel actions can be effectively and justly tried. On the other hand, the connections of both plaintiffs with the United States are minimal. They cannot realistically claim to have reputations which need protection in the United States. It is therefore not an appropriate forum.
>
> In agreement with Hirst L.J. I am satisfied that England is the most appropriate jurisdiction for the trial of the actions."

[12] Thus the Albaforth remains good law and the place where a tort arises is a weighty factor pointing to that jurisdiction being the appropriate one for proceedings based on that tort. This is consistent with the European Conventions and the Civil Jurisdiction and Judgments Act 1982, as amended, whereby persons may be sued in tort in the courts of the jurisdiction within the United Kingdom in which the harmful event occurred.

[13] With these considerations in mind I turn to consider the circumstances of this appeal. In his careful reserved judgment the Master set out the facts and then, correctly, the principles applicable to forum non conveniens as summarised by Lord Goff in the Spiliada case. It does not appear that he was referred to the Albaforth or Berezovsky cases. He approached the issue on the principles to be found in the Spiliada case and concluded that the connection between the cause of action and this jurisdiction to be tenuous, particularly in view of the act that liability was admitted and the only issue was the amount of compensation. Reference is made to the suggestion that this jurisdiction was chosen as the level of compensation awarded might be higher than that awarded in England. The Master considered, correctly, that this was not a

proper reason for refusing a stay of the proceedings, if that was the appropriate order to make.

[14] The issue on the trial of this action will be the level of compensation to be awarded to the plaintiff in the light of his physical injuries and his care to date and in the future. Apart from any evidence to be provided by the Royal Victoria Hospital and those at the scene of the accident all other witnesses appear to be based in England. In all probability much of the evidence will not be in dispute and can be provided by written reports. Comparative costs of travel to Northern Ireland were provided and it can be assumed that air fares would add an additional element, though not a very significant amount. There may be some inconvenience for witnesses in travelling to Belfast as compared with another venue in England. Based on the rates quoted by the English solicitors it was submitted that the cost of litigation in England and Wales would be significantly higher than in Northern Ireland.

[15] The plaintiff is entitled as of right to bring these proceedings in Northern Ireland, he does not require the leave of the court as a plaintiff would in an application for leave to serve a writ outside the jurisdiction. He has chosen this jurisdiction in the exercise of his right. Prima facie this jurisdiction is the natural forum for his action as his injuries were sustained in this jurisdiction. In what circumstances should the exercise of that right be displaced? The onus lies on the defendant to show that another jurisdiction is the more suitable or appropriate forum. The writ was served in March 2005. The original summons was issued on 6 June 2006. This was under Order 12 Rule 8 and sought that the writ be set aside on the basis that the proceedings had been brought in breach of Council Regulation 44/2001. When the summons came on for hearing on 3 October 2006 the summons was amended to forum non conveniens. The Statement of Claim was served in March 2006. Evidence has been gathered and this process continues.

[16] It can be said with some justification that the defendant makes this application late. The appropriate time to make it would have been immediately after the service of the writ. By entering an appearance and letting so much time pass it can be said that the defendant has to some extent submitted to the jurisdiction of this court. Another factor is that proceedings in England are statute barred under the Limitation Act 1980 since 25 March 2005, long before the application the subject of this appeal. Mr Spence has confirmed to this court his instructions that should this court affirm the decision of the Master, the defendant would not take the limitation point in proceedings brought in England and Wales. Other factors to be taken into account include the stage which the proceedings have reached in Northern Ireland, the costs thrown away if those proceedings are to be discontinued, the extra costs incurred in the commencement of proceedings in England and Wales as well as the further delay that this will entail. When I consider all the circumstances and factors mentioned and balance those with the exercise by

the plaintiff of his right to commence the proceedings in Northern Ireland which jurisdiction is prima facie the natural forum for this action I find that the defendant has failed to discharge the onus upon him of demonstrating that England and Wales is the most suitable or appropriate forum for this action. Accordingly I reverse the order of the Master and dismiss the amended summons and determine that this jurisdiction is not forum non conveniens.