[TRIANTAFYLLIDES, P., STAVRINIDES, A. LOIZOU, JJ.]

HALIL ISMAEL SABBAR,
Appellant-Plaintiff,

v.

FETINE HUSEYIN DELI YUSUF,
Respondent-Defendant.

(*Civil Appeal No.* 4927).

Further evidence on appeal—Application for leave to produce such fresh evidence—Principles applicable—Evidence sought to be adduced in the instant case could have been made available at the trial Court with reasonable diligence—Application refused.

Appeal—Fresh evidence—Principles applicable—See supra.

Appeal—Notice of appeal—Amendment—Application for leave to amend—New ground of appeal nothing more than an amplification of the grounds of appeal already on record—Application refused.

Amendment of notice of appeal—See supra.

The facts sufficiently appear in the ruling of the Court whereby they have refused (*a*) an application for leave to adduce fresh evidence on appeal, and (*b*) an application for leave to amend the notice of appeal.

Cases referred to :

Ashiotis v. *Weiner* (1966) 1 C.L.R. 274 ;

Crook v. *Derbyshire* [1961] 3 All E.R. 786 ;

House v. *Haughton Brothers* (*Worcester*), *Ltd.* [1967] 1 All E.R. 39.

Application.

Application for leave to adduce fresh evidence on appeal and to amend the notice of appeal in an appeal against the judgment of the District Court of Limassol (Malachtos, P.D.C. and Loris, D.J.) dated the 20th June, 1970, (Action No. 2214/69) dismissing plaintiff's claim for the sum of £500 due to him by the defendant by virtue of a bond in customary form.

A. Dana with *S. Hilmi* (*Miss*), for the appellant.

A. M. Berberoglou, for the respondent.

The ruling of the Court was delivered by :—

TRIANTAFYLLIDES, P. : In the course of this appeal counsel for the appellant filed an application seeking, first, leave to adduce evidence before this Court regarding the circumstances in which an earlier action, No. 416/60, was withdrawn as having been settled and, secondly, leave to amend the notice of appeal by adding a new ground of appeal related to the view which the trial Court took of the withdrawal of the said action.

By the statement of claim in action No. 2214/69—in which the judgment now appealed from was given—the appellant based his claim against the respondent on a bond dated the 29th June, 1956, which, allegedly, had been lost. In the statement of defence the respondent stated that he would " raise the preliminary objection of *res judicata* ", because the bond " was the subject-matter in action No. 416/60 of the District Court of Limassol, which was withdrawn and dismissed on 27th November, 1961 " and the said bond was " disposed of " by that action.

The file of action No. 416/60 was produced as evidence before the trial Court ; there is a record therein, dated the 27th November, 1961, to the effect that the action was " dismissed " after counsel appearing for the plaintiff in that action—who is now the present appellant—had stated that he was withdrawing the action " as settled ".

Counsel for the appellant, in support of his request for leave to adduce further evidence, relied mainly on the contention that he could not have anticipated that it would have been held, eventually, by the trial Court that action No. 416/60 was " settled "; and that, therefore, he could not have adduced evidence at the trial regarding the alleged settlement. We think that this is not a valid argument because counsel for the appellant could, on inspecting the file of the said action, have seen that the action had been withdrawn " as settled " and he could have sought to call at the trial any admissible evidence pertaining to the issue of the settlement. Even if he inspected for the first time the file of action No. 416/60 when it was put in evidence at the trial and realized only then the relevancy of evidence regarding the settlement, he could, if necessary, have applied for an adjournment in order to be enabled to call such evidence.

We, therefore, do not think that the circumstances exist which would permit us, in the light of the case-law governing

the grant of leave to adduce evidence on appeal (see, *inter alia*, *Ashiotis* v. *Weiner* (1966) 1 C.L.R. 274) to make the relevant order which has been applied for by appellant's counsel. In support of his application in this respect he has cited the case of *Crook* v. *Derbyshire* ([1961] 3 All E.R. 786) which is clearly distinguishable from the present one as in that case one of the parties had been taken by surprise by testimony of the other side which could not have been anticipated ; and, likewise, distinguishable is the case of *House* v. *Haughton Brothers* (*Worcester*), *Ltd.* ([1967] 1 All E.R. 39) which was also cited by counsel for the appellant.

Regarding the proposed new ground of appeal we are of the view that it is nothing more than an amplification of the grounds of appeal already on record ; as it merely contains arguments which may be advanced in support of such grounds the proposed amendment of the notice of appeal is not warranted.

This application is, therefore, dismissed with costs against the appellant.

Application dismissed with costs.