CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL FROM THE DISTRICT COURTS.

[ZEKIA P., MUNIR & JOSEPHIDES, JJ.]

1966
Jan. 11

GEORGHIOS PAPADOPOULLOS,

Appellant-Defendant,

v.

CHARILAOS DIKAIOS,

Respondent-Plaintiff.

GEORGHIOS PAPADOPOULLOS v. CHARILAOS DHIKAIOS

(*Civil Appeal No.* 4552)

Practice—Pleadings—Evidence—Trial in civil cases—It is permissible for the Courts to hear a case on copies of pleadings when the originals are not available—The matter is governed by the rules of evidence that when the original has been lost or destroyed or when production in Court is physically impossible or highly inconvenient then secondary evidence of the contents of the original may be given—Therefore, the Courts have quite properly come to adopt over the past two years the practice regarding the reconstruction of the file of proceedings where such file was not available in Court—Same practice adopted subsequently by the new Civil procedure (Amendment No.2) Rules, 1965, of the 24th December 1965, rule 4—And no conclusion may reasonably be drawn that before such rule was made the Courts had no power to adopt the practice which they did over the past two years.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Emin D.J.) dated the 23rd November, 1965, (Action No. 3984/63) whereby it was directed that the hearing of the case proceed on the basis of the copies of the pleadings which were filed originally with the registry in the old Court House in Nicosia in 1963.

Appellant in person.

G. Pelaghias, for the respondent.

The facts sufficiently appear in the judgment of the Court.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: The appellant, who appeared in person addressed us today at some length on a matter of technicality, that is, whether it is permissible for the District Court to hear a case on copies of pleadings which were filed originally with the registry in the old Court House in Nicosia in 1963. His main argument was that if the original pleadings were not available at the time of hearing then it was impossible for the District Court to hear the case.

Although no authority was cited to us on the point, we think that this case can easily be decided by the application of the law and rules of evidence in force in the Republic, that is to say, the rule that when the original has been lost or destroyed, or when production in Court is physically impossible or highly inconvenient, then secondary evidence of the contents of the original document may be given. This rule is conveniently summarised in Phipson on Evidence, 10th Edition pages 683-685, paragraphs 1709 to 1711. Compare also the rules applicable to lost bills of exchange and the power of the Court to order that the loss of the instrument shall not be set up in an action upon a bill (Bills of Exchange Law, Cap. 262, sections 69 and 70).

In order to meet the difficulties which arose in the past two years in Nicosia, the District Court established a practice whereby parties to an action were allowed to file copies of the pleadings which were originally filed in the old Court House. Apparently this practice worked satisfactorily until the case of the appellant came on for hearing before the District Court of Nicosia in October last.

In this case the respondent-plaintiff filed his action on the 8th October, 1963, and a copy of the specially indorsed writ of summons was duly served on the appellant-defendant in October 1963. The plaintiff is an architect and his claim is for £180 agreed and/or reasonable remuneration for the preparation of plans and specifications for the defendant. After the service of the writ of summons on the defen-

dant a memorandum of appearance, signed by the defendant's advocate Mr. A.N. Lemis, was filed in the registry of the District Court of Nicosia on the 31st October, 1963. On the same day, defendant's advocate filed his statement of defence. On the following day, 1st November, 1963, plaintiff's advocate filed an application requiring the Registrar of the District Court to fix the case for hearing. Then there is a gap of about 19 months, as the file was not available to the Registrar in the new Court House to fix the case for hearing.

On the 4th June, 1965, an application was filed in the registry, signed by the advocate for the plaintiff, Mr. Pelaghias, and the advocate for the defendant, Mr. A. N. Lemis. As already stated, they followed the practice established in the past two years and they filed copies of the specially indorsed writ, the memorandum of appearance, statement of defence and of the application to fix a date for trial. As the writ was specially indorsed the statement of claim appeared on the writ. The judge approved the reconstruction of the file of proceedings and eventually the Registrar fixed the case for hearing on the 13th October, 1965. Notice of the date of hearing was given at the defendant's address for service. Subsequently the defendant alleged that, in the meantime, he had changed his advocate but he did not notify the Court of any change of his address for service.

Be that as it may, it seems that on the 25th September, 1965 the defendant came to know of the date of hearing and on the 27th September he addressed a letter to the Registrar of the District Court protesting for the fixture of the case. At about the same time Mr. A. N. Lemis addressed a letter to the registrar of the District Court (which was filed on the 5th October), stating that "by inadvertence" he had signed the application to the Court for the reconstruction of the file of proceedings and that he had ceased appearing on behalf of the defendant in the action long before the 18th February, 1965.

Pausing there for a moment, it would, we think, be appropriate to remark that that is a rather surprising statement to be made by a responsible advocate. But it should also be stated that, to his credit, when Mr. Lemis was later called by the Court, he went and gave evidence and helped the Court to the best of his ability.

When the Judge was faced with this protest by the defendant as to the file of proceedings, he directed the plaintiff's

advocate to give to the defendant a copy of the pleadings which the plaintiff's advocate did The case was then adjourned in order to give to the defendant an opportunity to check those pleadings When the case came on for hearing before the Judge on the 11th November, 1965 the defendant was asked whether he had checked the pleadings and whether they were true copies, and he replied "I cannot check them because I do not have the originals" Thereupon the Court made the following direction "Plaintiff to give evidence and prove that the copies supplied to defendant are true copies" Plaintiff's advocate gave evidence to the effect that the documents filed in Court were true copies of the originals He was followed by the defendant who in his evidence stated that he could not check the documents with the originals and that he insisted that the originals be brought before the Court The Judge then very rightly in our opinion, decided to call the defendant's advocate, Mr Lemis, to give evidence Mr Lemis in his evidence stated that the copy of the specially indorsed writ which was served on the defendant and the copy of the defence which was prepared by him and typed by the defendant were with the defendant himself, and he further stated that the statement of defence which he signed on the 31st October, 1963, was a true copy of the copy now put before the Court

In the light of that evidence we are of the view that the Judge rightly found that the copies of the pleadings filed in June, 1965, were true copies of the originals filed in the old Court House The duty of the Court was to be satisfied that the pleadings in the action were before it so that it could proceed to the hearing That was found to be so, and the formality as to the production of the actual "jacket" with the original pleadings does not really affect the substance of the case

There is one other point which I think, we need touch, and that is the question of the making of the new Civil Procedure (Amendment No 2) Rules, 1965, which were published in the Official *Gazette* on the 23rd December, 1965, that is, after the ruling of the Judge in this case Rule 4 of those Rules came to adopt the practice followed over the past two years with regard to the reconstruction of the file of proceedings in actions where the file was not available in Court The object of that rule was to lay down a uniform practice, and no conclusion may reasonably be drawn that before it was made the Court had no power to adopt the practice which it did over the past two years.

For these reasons the *appeal is dismissed.*

Mr. Pelaghias : I claim costs because I lost much time.

COURT : With regard to costs, we think that the order for costs in the trial Court should stand but as regards the costs of appeal, this being a novel point, we shall not make an order for costs.

Appeal dismissed. No order for costs as regards the costs of appeal. Trial Court's order for costs to stand.