1985 November 15

[STYLIANIDES, J.]

IN THE MATTER OF AN APPLICATION BY EVANGELOS CHARALAMBOUS AND ANOTHER FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI.

(Civil Application No. 19/85).

Prerogative Orders—Certiorari—Application for leave to apply for an order of—To quash a consent judgment on the ground of alleged fraud or collusion between the applicants' own advocate and their insurers—A judgment or order of an inferior Court may be quashed by certiorari, if obtained by fraud or perjury exercised by the other party to the proceedings or a witness with the collusion of the other party—In this case leave would be refused as otherwise the Court's hitherto established jurisdiction by the case law through the centuries will be extended.

Advocates—Authority of—An advocate as between himself and his client has implied authority to compromise an action without reference to the client provided the compromise does not involve "collateral matters"—And as between himself and the opposing litigant he has ostensible authority to do so.

Prerogative Orders—Certiorari—Application for leave to apply for an Order of certiorari—Applicant should establish a prima facie case—The remedy is discretionary—Leave may not be granted, if the application for leave was not made with reasonable diligence—The delay of two years in the present case was inordinate.

Applicant 1 (herein called the father) and applicant 2 (herein called the son) were the defendants in Action 1461/80 District Court Limassol brought against them by one N. P. for damages for personal injuries allegedly sustained by the plaintiff by reason of the son's negligence and/or breach of statutory duty whilst the son was riding his father's motor cycle. They retained advocate X who was

also the legal adviser of the insurance company with which the motor cycle was insured.

On 31.3.82 the advocates of the parties stated in Court that the action was provisionally settled subject to the defendants' approval. The action was repeatedly adjourned upon applications by advocate X, who wanted time to finalise the settlement. On 23.11.82 counsel for the plaintiff applied for adjournment in order to amend the statement of claim by including therein serious after effects in respect of plaintiff's future. As a result the action was taken off the trial list.

The next record in the action is dated 20.4.83. Both advocates appeared in Court and declared a settlement of the action. As a result judgment was issued by consent in favour of the plaintiff and against the defendants for £13,190 plus £800 costs. The plaintiff was present, but the defendants were absent.

In the meantime, on 23.3.82, the same advocate X instituted on behalf of the said Insurance Company action 1061/82 against the applicant father claiming "damages for breach of contract and/or policy of insurance between the plaintiffs and the defendant on the grounds that the father permitted the son to drive his motor car notwithstanding that the son was under 25 years of age and had less than 12 months experience and was involved in an accident as a result of which N. P. brought Action 1461/80.

On 1.3.84 the son was added as a co-defendant to action 1061/82. The son and the father retained advocates A and B to defend them. In May 1984 they appointed their present advocate. Pleadings were exchanged and conferences held. The claim of the insurance company was known at least to the father as from 27.4.82 when the action was served on him.

By the present application the applicants seek leave to apply for an Order of Certiorari to quash the consent judgment issued in Action 1461/80 on 20.4.83 on the following grounds, namely -

(a) Breach of the rules of natural justice in that the applicants were not present;

(b) The applicants did neither consent nor authorised expressly their advocate to enter into the impugned compromise; and,

(c) Fraud.

Ground (a) was in the course of the hearing rightly abandoned. It was argued on behalf of the applicants that the consent judgment was the result of collusion between advocate X and the Insurance Company, breach of duty and professional etiquette by advocate X and fraud exercised by advocate X against his clients, i.e. the applicants.

Held, refusing leave:

(1) Certiorari lies to remove the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions for the purpose of quashing such proceedings. An order may be made to quash a judgment or order of an inferior court procured by fraud or perjury. The fraud or perjury should be clear and manifest and it should be exercised by the other party (not the one who claims the relief of certiorari) or by a witness with the collusion of the other party. Hitherto the cases have only gone to the extent of allowing certiorari where the decision of the inferior court is vitiated by fraud or perjury. To extend the ambit of certiorari would be a radical transformation of its character as its limits are well established and do not extend beyond defects or irregularities at the trial. The Court will not quash the order unless it is satisfied that the person in whose favour the order was made could have been convicted of the fraud or perjury whereby the decision was procured.

(2) It is well settled that the advocate retained in an action has an implied authority as between himself and his client to compromise the suit without reference to the client, provided that the compromise does not involve matter "collateral to the action"; and ostensible authority, as between himself and the opposing litigant, to compromise the suit without actual proof of authority, subject to

the same limitation; and that a compromise does not involve "collateral matter" merely because it contains terms which the Court could not have ordered by way of judgment in the action.

(3) In the present case no fraud was exercised by plaintiff in action 1461/80 or his counsel nor were they aware of the alleged collusion. The authority of advocate X was not limited in any respect. The applicants consent or express authority was not needed for a matter which was within the ordinary authority of advocate X and consequently the applicants are bound by it.

(4) For leave to be given the applicants must make out a prima facie case sufficient to justify the granting of the leave. The applicants failed to establish such a case. The alleged fraud is neither clear nor manifest. To grant leave on the alleged fraud or collusion between the applicants' own advocate X and their insurers would amount to extension of the Court's jurisdiction beyond the limits hitherto delineated by the case law through the centuries.

(5) In any event the remedy is discretionary and leave may be refused unless applied for with reasonble diligence. In this case there was inordinate delay of two years and this is a further ground for refusing leave.

Leave refused.

Cases referred to:

R. v. *Gillyard* [1828] 12 Q.B. 527, E.R. 116, Q.B.D. 965;

R. v. *Cambridgeshire Justices* [1835-1842] All E.R. Rep. 176;

R. v. *Bolton* [1835-1842] All E.R. Rep. 71;

Colonial Bank of Australasia v. *Willan* [1874-1880] All E.R. Rep. Extension Volume, p. 187;

R. v. *Recorder of Leicester, Ex-parte Wood* [1947] 1 All E.R. 928;

R. v. *Ashford (Kent) Justices, Ex-parte Richley* [1955] 3 All E.R. 604;

R. v. *West Sussex Quarter Sessions* [1973] 3 All E.R. 289;

R. v. *Crown Court at Wolverhampton, ex-parte Crofts* [1982] 3 All E.R. 702;

Strauss v. *Francis* [1866] L.R. 1 Q.B. 379;

Matthews v. *Munster* [1887] 20 Q.B.D. 141;

Waugh and Others v. *H. B. Clifford & Sons Ltd. and Others* [1982] 1 All E.R. 1095;

Re Kakos (1984) 1 C.L.R. 876;

Re Kakos (1985) 1 C.L.R. 250;

Sidness v. *Wilson & Others* [1966] 1 All E.R. 681;

Land Securities plc. v. *Receiver for the Metropolitan Police District* [1983] 2 All E.R. 254;

Re Charalambos Psaras (1985) 1 C.L.R. 561;

R. v. *Senate of the University of Aston, Ex-parte Roffey and Another* [1969] 2 All E.R. 964.

Application.

Application for leave to apply for an order of certiorari to bring up and quash the consent judgment issued by the District Court of Limassol on 20.4.1983.

E. Karaviotis, for the applicants.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants seek leave to apply for an order of certiorari to bring up and quash the consent judgment issued by the District Court of Limassol on 20.4.83. The grounds upon which the said relief is sought are:-

(a) Breach of the rules of natural justice in that the applicants were not present;

(b) The applicants did neither consent nor authorised expressly their advocate to enter into the impugned compromise; and,

(c) Fraud.

The facts, as they emerge from the numerous affidavits—six in number—and the exhibits attached thereto, are:-

Applicant No. 1 (herein referred to as "the father") was the owner of motor-car Reg. No. FP 47. Applicant No. 2 (herein referred to as "the son") on 9.11.79, whilst driving the said car on a public road, came into collision with motor-cycle Reg. No. DR 287 driven by a certain Neophytos Procopiou, a Police Inspector, of Limassol. As a result of that collision Neophytos Procopiou sustained very serious personal injuries, loss and damage. He filed Action No. 1461/80 against originally the son, claiming damages for personal injuries due to negligence and/or breach of statutory duty. The father was later added as defendant No. 2 by order of the Court.

The defendants retained advocate X. of Limassol to defend them in the said action. The motor-car was insured with Phoenix Assurance Co. Ltd. Advocate X. was also the legal adviser in Limassol of the said company.

On 31.3.82 the advocates of the parties stated to the Court that they had arrived at a provisional settlement which was only subject to the approval of the defendants' insurers and they applied for a month's adjournment for mention pending such approval. The case was adjourned to 3.5.82 for mention.

On 3.5.82 counsel for the defendants applied for a further adjournment to obtain the approval of the insurance company of the defendants, if at all, and the Court adjourned the case for mention to 28.5.82.

In the meantime, on 23.3.82, the same advocate X. instituted on behalf of Phoenix Assurance Co. Ltd. Action No. 1061/82 in the District Court of Limassol against the applicant father, thereby claiming "damages for breach of contract and/or policy of insurance between the plaintiffs and the defendant covering motor-car Reg. No. F.P. 47

for the period 3.4.79 - 2.4.80 as the defendant permitted the said motor-vehicle to be driven by a driver aged under 25 and with driving experience less than 12 months and was involved in an accident, as a result of which Neophytos Procopiou was injured and in Action No. 1461/80 claimed damages due to the negligent driving of the said car by the said driver and/or indemnification of the plaintiffs by the defendant for any amount they would pay as a result of Action No. 1461/80".

The writ of summons in this action was served on the father on 27.4.82.

On 28.5.82 counsel X. for the defendants in Action No. 1461/80, who, as already said, had instituted Action No. 1061/82 on behalf of the insurance company, applied for more time to finalize the provisional settlement. The Court adjourned the case to the 14.6.82 for mention.

On 23.11.82 counsel appeared before the Court; the plaintiff was present: the defendants were absent. Counsel for the plaintiff applied for adjournment in order to enable him to file an application for amendment of the statement of claim to include therein serious aftereffects in respect of the future of the plaintiff and to have the plaintiff re-examined by his own doctor. The case was taken off the trial-list pending the filing and determination of the said application.

The next record of Case No. 1461/80 before me is that of 20.4.83. Advocates of the parties and the plaintiff were present but the defendants were absent. The record reads as follows:-

"20.4.83

Plaintiff present, for him Advocates A and B.

For the defendants Advocate X.

Mr. A.: A settlement has been reached by virtue of which the defendants will submit to judgment in the sum of £13,190.- out of which the sum of £190 concerns material damage to the motor cycle and £13,000 for personal injuries, plus £800 agreed costs.

Mr. X.: I agree and I submit to Judgment accordingly. Any previous orders as to costs to be cancelled.

The Plaintiff, who is present in Court, has the settlement explained to him and he states that he agrees fully with the settlement reached.

Court: By consent there will be Judgment in favour of the plaintiff and against the defendants jointly and severally and/or otherwise in the sum of £13,190.- plus £800 agreed costs. All previous orders as to costs are, by consent, hereby cancelled.

(Sgd) Chr. Hji-Tsangaris,

P.D.C."

On 1.3.84 the son was added by order of the Court as defendant No. 2 in Action No. 1061/82 instituted, as aforesaid, by the insurance company against the father. The defendants-applicants retained advocates A. and B. to defend them. Later, in May, 1984, they changed their advocates and appointed their present one. Pleadings were exchanged; conferences were held between counsel, and interviews took place; Mr. Karaviotis had meetings with the Manager of the Insurance Company in Cyprus. The action was fixed for mention on 29th October, 1984. The plaintiff insurance company also changed their advocate X. and retained their Nicosia legal adviser.

The claim of the insurance company was known to the applicants or at least to the applicant father from 27.4.82 when the writ of summons was duly served on him. Nothing, however, was done by him.

It is true that in the statement of defence it is denied that the defendant father was at the material time vicariously liable for the acts and/or omissions of the defendant son. The authority of counsel X. to compromise the case was not limited or restricted at any time by his clients—the applicants.

The ground of departure from natural justice because of the absence of the applicants before the District Court of Limassol at the time that the consent judgment was issued

was not pursued at the hearing of this application, and rightly so.

It was strenuously argued by counsel for the applicants that the judgment sought to be brought up, reviewed and quashed is the result of collusion between the insurance company and counsel X. who acted both for the present applicants and the insurers, breach of duty and professional etiquette by advocate X. and fraud exercised by advocate X. against his clients, the applicants. Neither the plaintiff nor his advocate in Action No. 1461/80 nor the Court were parties to or knew anything about any such collusion or fraud. The fraud was exercised by X. advocate against his clients, the applicants, as, had the case been heard and not settled, the applicant father would have had a perfect defence as the factual situation did not warrant vicarious liability and/or any liability in respect of the accident in question and/or the acts or omissions of his son. The son was driving the car at the material time without the consent or even the knowledge of the father.

Certiorari lies to remove the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions for the purpose of quashing such proceedings. An order may be made to quash a judgment or order which has been obtained by fraud.

In *R.* v. *Gillyard*, [1828] 12 Q.B. 527, E.R. 116, Q.B.D. 965, Gillyard was convicted of an offence against the laws of excise. The conviction was procured by the collusion of a maltster with the servant Gillyard in order to protect the maltster against proceedings for the same offence. In an application for certiorari by the Attorney-General Lord Denman, C.J., said:-

> "The affidavits are not contradicted; and they disclose such a case of fraud and collusion to defeat the law that this conviction cannot be allowed to stand.... If it were necessary, we ought, in such a case, to create a precedent, in order that persons who have set the law in motion for fraudulent purposes may understand that, if they are charged with such an offence, they will be expected to answer the accusation".

Coleridge, J., said:-

> "This is a rule for quashing a conviction: and we make the rule absolute on the ground that this conviction has been a fraud and mockery, the result of conspiracy and subornation of perjury. When the Court observes such dishonest practices, it will interfere, although judgment has been given".

And Erle, J., said:-

> "This Court has authority to correct all irregularities in the proceedings of inferior tribunals, which in this case have been resorted to for the purpose of fraud. In quashing this conviction, we are exercising the most salutary jurisdiction which this Court can exercise".

In *R.* v. *Cambridgeshire Justice,* [1835-1842] All E.R. Rep. 176, it was held that the proceedings would have been quashed only if fraud were manifestly made out.

In *R.* v. *Bolton,* [1835-1842] All E.R. Rep. 71, Lord Denman, C.J., said in an application for quashing an order of Middlesex Justices:-

> "All that we can then do when their decision is complained of is to see that the case was one within their jurisdiction, and that their proceedings on the face of them are regular and according to law. Even if their decision should on the merits be unwise or unjust, on these grounds we cannot reverse it".

In *Colonial Bank of Australasia* v. *Willan,* [1874-1880] All E.R. Rep., Extension Volume, p. 187, a Privy Council case, it was held that the Court will not quash the order removed except upon the ground either of manifest defect of jurisdiction in the tribunal that made it or of manifest fraud in the party procuring it. At p. 195 of the report Sir J. Colvile, in delivering the judgment of Their Lordships, said:-

> "The Court of Queen's Bench, whose exercise of this jurisdiction is discretionary, would certainly not quash an order of an inferior court upon the ground

of fraud in the procuring of it, unless the fraud were clear and manifest".

The Judicial Committee of the Privy Council obviously admitted the principle that if the Court is satisfied that there has been fraud in the proceedings, the remedy of certiorari would lie.

In *R.* v. *Recorder of Leicester, Ex-parte Wood,* [1947] 1 All E.R. 928. the respondent in affiliation proceedings against whom an order had been made by justices appealed to quarter sessions. At the hearing of the appeal before a recorder the appellant gave material evidence which was believed and the appeal was allowed. The evidence was wholly untrue and the appellant was subsequently. on his own confession, convicted of perjury in respect of the evidence given by him in his appeal. On an application for an order of certiorari, on the ground that it had been obtained by fraud, it was held that certiorari would lie and the order of the recorder was quashed.

In *R.* v. *Ashford (Kent) Justices, Ex-parte Richley,* [1955] 3 All E.R. 604, the mother of a child obtained an affiliation order against the putative father. At the hearing before the magistrates she and other witnesses gave evidence, and the respondent gave evidence denying paternity and called one R. as a witness with a view to his testifying that he had had sexual intercourse with the mother at about the date of the conception of the child. R. gave evidence to the effect that he had not had intercourse with her. The respondent having appealed, the Appeal Committee heard evidence, including that of R. who, after answering certain questions, declined to give further evidence and did not testify whether he had had sexual intercourse with the mother. The appeal was dismissed. Subsequently R. was charged with perjury in respect of his evidence at the original hearing that he had not had intercourse with the mother. At his trial she gave evidence that she had not had intercourse with him, but he was convicted and sentenced. The respondent, putative father, applied for certiorari to quash the affiliation order on the ground that R. had committed perjury and that his conviction therefor showed that the mother's evidence at his trial to the effect that she had

not had intercourse with him was untrue, and that accordingly the affiliation order should not stand. It was held that an order for certiorari should not be granted (i) merely because a witness had committed perjury, particularly when the witness was not shown to be in collusion with the party who had invoked the jurisdiction in the proceedings or (ii) when granting the order would involve the court in weighing one set of alleged facts against another.

Jenkins, L. J., at p. 609 said:-

"It seems to me impossible to hold that, where a claimant gives honest evidence in support of his or her claim and the claim is held to be established by the court, it should be possible for the defendant to contend that the proceedings are invalidated by some untrue evidence tending to support the claimant's case, put forward by the defendant himself".

At p. 610:-

"I venture to say that I think an order of certiorari to quash proceedings on the ground that they were procured by fraud or perjury should seldom if ever be made unless the facts regarding the alleged fraud or perjury have either been the subject of a conviction in regular criminal proceedings against the person to whom the fraud or perjury is imputed, or else have been admitted by something amounting to a confession by such person....

Bearing in mind the passage quoted by my Lord from *Colonial Bank of Australasia* v. *Willan*, I cannot hold that the fraud here alleged is sufficiently clear and manifest to warrant the court in exercising this discretionary jurisdiction".

And Parker, L.J., had this to say:-

"It has for long been recognised however, that it is a ground for quashing the decision of an inferior court if the decision has been obtained by the fraud or on the perjured evidence of the person invoking the jurisdiction of the court, either originally, as in *R.* v. *Gyllyard* or by way of appeal, as in *R.* v. *Lei-*

cester Recorder. It may be—and this view was expressed by Lord Goddard, C. J., in *R.* v. *Leicester Recorder*—that it may also extend to perjury committed by the other party—not the party seeking relief, but the party who has been brought before the court. But one thing is clear, and that is that there is no case to which counsel have been able to refer us in which certiorari has lain where the fraud or perjured evidence is that of a witness called by one of the parties, unless it is also shown that that perjured evidence was given in collusion with one of the parties".

(See, also, *R.* v. *West Sussex Quarter Sessions*, [1973] 3 All E.R. 289, and *R.* v. *Crown Court at Wolverhampton. ex-parte Crofts*, [1982] 3 All E.R. 702).

Certiorari lies when a judgment or order of an inferior court was procured by fraud or perjury. The fraud or perjury should be clear and manifest an it should be exercised by the other party—not the one who claims the relief of certiorari—or by a witness with the collusion of the other party. Hitherto the cases have only gone to the extent of allowing certiorari where the decision of the inferior court is vitiated by fraud or perjury. To extend the ambit of certiorari would be a radical transformation of its character as its limits are well established and do not extend beyond defects or irregularities at the trial. The Court will not quash the order unless it is satisfied that the person in whose favour the order was made could have been convicted of the fraud or perjury whereby the decision was procured.

In the present case the applicants retained advocate X. who compromised the case and consented to the issue of judgment in the sum of £13,190.- plus agreed costs in favour of the plaintiff against both defendants-applicants.

The authority of counsel to compromise was raised in a number of cases. In *Strauss* v. *Francis*, [1866] L. R. 1 Q. B. 379, a defamation action was compromised. In agreeing to the compromise the plaintiff's counsel acted without reference to his client. The plaintiff repudiated the

compromise and sought unsuccessfully to continue the action. Blackburn, J., said at p. 381:-

> "Counsel.... being ordinarily retained to conduct a cause without any limitation, the apparent authority with which he is clothed when he appears to conduct the cause is to do everything which, in the exercise of his discretion, he may think best for the interest of his client in the conduct of the cause: and if within the limits of this apparent authority he enters into an agreement with the opposite counsel as to the cause, on every principle this agreement should be held binding".

In *Matthews* v. *Munster*, [1887] 20 Q.B.D. 141, on the trial of an action for malicious prosecution the defendant's counsel, in the absence of the defendant and without his express authority, assented to a verdict for the plaintiff for £350.- with costs upon the understanding that all imputations against the plaintiff were withdrawn. It was held by the Court of Appeal that such settlement was a matter which was within the apparent general authority of counsel and was binding on the defendant. Lord Esher, M.R., said about the relationship of client and counsel on pp. 142-143:-

> "This state of things raises the question of the relationship between counsel and his client, which is sometimes expressed as if it were that of agent and principal. For myself I do not adopt and never have adopted that phraseology, which seems to me to be misleading. No counsel can be advocate for any person against the will of such person, and as he cannot put himself in that position so he cannot continue in it after his authority is withdrawn. But when the client has requested counsel to act as his advocate he has done something more, for he thereby represents to the other side that counsel is to act for him in the usual course, and he must be bound by that representation so long as it continues, so that a secret withdrawal of authority unknown to the other side would not affect the apparent authority of counsel. The re-

quest does not mean that counsel is to act in any other character than that of advocate or to do any other act than such as an advocate usually does. The duty of counsel is to advise his client out of court and to act for him in court, and until his authority is withdrawn he has, with regard to all matters that properly relate to the conduct of the case, unlimited power to do that which is best for his client".

In *Waugh and Others* v. *H. B. Clifford & Sons Ltd. and Others*, [1982] 1 All E.R. 1095, Brightman, L. J., at p. 1106 said:-

"I think it would be regrettable if this court were to place too restrictive a limitation on the ostensible authority of solicitors and counsel to bind their clients to a compromise. I do not think we should decide that matter is 'collateral' to the action unless it really involves extraneous subject matter, as in *Aspin* v. *Wilkinson*, [1879] 23 S. J. 388 and *Re a debtor (No. 1 of 1914)*, [1914] 2 K. B. 758. So many compromises are made in court, or in counsel's chambers, the solicitor but not the client being present. This is inevitably so where a corporation is involved. It is highly undesirable that the court should place any unnecessary impediments in the way of that convenient procedure. A party on one side of the record and his solicitor ought usually to be able to rely without question on the existence of the authority of the solicitor on the other side of the record, without demanding that the seal of the corporation be affixed; or that a director should sign who can show that the articles confer the requisite power on him; or that the solicitor's correspondence with his client be produced to prove the authority of the solicitor. Only in the exceptional case, where the compromise introduces extraneous subject matter, should the solicitor or counsel retained in the action be put to proof of his authority. Of course it is incumbent on the solicitor to make certain that he is in fact authorised by his corporate or individual client to bind his client to a compromise. In a proper case he can agree without specific reference to his client. But in the great majority of cases, and cer-

tainly in all cases of magnitude, he will in practice take great care to consult his client, and I think that his client would be much aggrieved if in an important case involving large sums of money he relied on his implied authority. But that does not affect his ostensible authority vis-a-vis the opposing litigant".

The law thus became well established that the solicitor or counsel retained in an action has an implied authority as between himself and his client to compromise the suit without reference to the client, provided that the compromise does not involve matter "collateral to the action"; and ostensible authority, as between himself and the opposing litigant, to compromise the suit without actual proof of authority, subject to the same limitation; and that a compromise does not involve "collateral matter" merely because it contains terms which the court could not have ordered by way of judgment in the action.

The complaint of the applicants is that advocate X., whom they retained to defend them in Action No. 1461/80, acted in collusion with the insurance company and to their detriment in compromising the action by submitting to the consent judgment of 20.4.83. No fraud was exercised by the plaintiff or his counsel nor were they aware of the alleged collusion.

In the present case the authority of counsel X. was not limited in any respect. He had implied authority and ostensible authority to compromise the action. The consent or express authority of the applicants was not needed for a matter which was within the ordinary authority of counsel X. and the clients - applicants -are bound by it - *(Halsbury's Laws of England,* 4th Edition, Volume 3, Paragraph 1181).

For leave to be given in an application for certiorari the applicant must make out a prima facie case sufficiently to justify the granting of the leave—*(In Re Kakos,* (1984) 1 C.L.R. 876; *In Re Kakos,* (1985) 1 C.L.R. 250; *Sidnell* v. *Wilson & Others,* [1966] 1 All E.R. 681, at p. 686; *Land Securities plc.* .v. *Receiver for the Metropolitan Police District,* [1983] 2 All E. R. 254, at p. 258; *In re Charalam-*

bos Psaras, Application No. 83/85, not yet reported).*

Having regard to all the material placed before me by and on behalf of the applicants, even if their version were accepted in toto, no arguable issue was raised and no prima facie case was made out that the consent judgment of 20.4.83, for which an application for leave for certiorari for its quashing is sought, was procured by fraud. The alleged fraud is neither clear nor manifest. To grant leave on the alleged collusion between applicants' counsel X. and their insurers would amount to extending the Court's jurisdiction beyond the limits hitherto delineated by the case-law through the centuries.

Prerogative orders are special discretionary remedies. In England by provisions in the rules of Court (R.S.C. Ord. 53, r. 2(2)) leave will not be granted to apply for an order of certiorari to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made within 6 months after the date of the proceeding or such other period as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or Judge to whom the application for leave is made.

The aforesaid English rule does not apply in Cyprus and, therefore, there is no time-limit. An application, however, for leave must be made with reasonable diligence. Leave will not be granted unless applied for within a reasonable time. If there is delay not accounted for to the satisfaction of the Court, then leave may not be granted. Leave is granted only where diligence is shown by an applicant in real need of the remedy—(*R.* v. *Senate of the University of Aston, Ex-parte Roffey and Another,* [1969] 2 All E.R. 964, at p. 979).

In the instant case there was an inordinate delay of over two years, which was not accounted for, from the date that the consent judgment was issued until the filing of this application. This would be a further ground for refusing leave.

* Reported in (1985) 1 C.L.R. 561.

The applicants may have other remedies either against advocate X. or against the insurers but the door is not open for them to move the Court for the remedy of certiorari.

In the result leave is refused.

Application dismissed.