trial, he does not elect and should not be allowed to elect to be tried by any particular judicial officer. The submission made for the appellant if adopted would lead to absurd and incongruous results.

As regards the second point, as the Solicitor-General has pointed out, the Court which assumes jurisdiction under section 20 (4) is not obliged to record its reasons for so doing, and unless it is patent on the face of the record that the discretion has been improperly exercised we must assume that the assumption of jurisdiction was lawful.

In this particular case the Attorney-General, who presumably had seen the papers, had given his consent to a summary trial; and the event of the case, the sentence of 18 months imposed upon the appellant, shows that the Court was correct in trying the case summarily.

For these reasons I consider that this appeal should be dismissed.

ZEKIA, J.: I agree.

[HALLINAN, C.J., AND ZEKIA, J.]

(April 22, 1953)

MICHALAKIS S. SAVVIDES, *Appellant*,

v.

SAVVAS THEODOSSIOU, *Respondent*.

(*Civil Appeal No.* 3962.)

Sale of goods—Conditional passing of property on shipment—Cash against documents—Proper law of the contract—Proof of damage.

T, a bicycle-dealer in Famagusta, placed two orders for bicycles and parts with P Ltd. in England through S, a commission agent in Nicosia. Subsequently it was agreed that payment be made against documents. The goods relating to both orders arrived together; the first order was consigned to T but the bills of exchange of the second order were drawn on S. T took delivery of the first order but S, without T's consent, took the second order and converted it to his own use. T sued S for wrongful conversion and claimed £103 damages. S alleged that T had abandoned his interest in the second order; but T denied this.

The trial Court found that the property in the second order passed to T when P Ltd. placed it on board the ship; S was therefore liable for conversion whether or not T had requested S to be relieved from the contract with P Ltd.

Held : (1) The contract was in a form obviously settled by the sellers, P Ltd., in England and acceptance was in England. It is reasonable to suppose that the parties entered into the contract on the assumption that the law of the contract was English law.

(2) Since English law governed the contract and since delivery of the bills of lading was not to be made till the purchaser accepted or paid for the bills of exchange, the property in the second order did not pass to T unless S had accepted or paid for the bills as T's agent. *Mirabita* v. *The Imperial Ottoman Bank*, 3 Exch. Div. 164, applied.

(3) T had not discharged the burden of proving the value of the goods at the time of conversion, but S had admitted £8. 8*s*. 8*p*. as damages.

Case sent back to determine the question of fact left undetermined by the trial Court. Damages limited to £8. 8*s*. 8*p*.

Appeal by defendant from the judgment of the District Court of Nicosia (Action No. 1413/49).

C. Severis for the appellant.

Chr. Mitsides and *P. Haji Petrou* for the respondent.

The judgment of the Court was delivered by:

HALLINAN, C.J. : The plaintiff-respondent in this case is a bicycle dealer and repairer at Famagusta and in 1947 he ordered some bicycles and parts of bicycles from the English Firm W. R. Pashley Limited. These orders were made through the defendant-appellant, who is a merchant and commission agent in Nicosia. The contract for one order was made in March and the other in November, 1947. The terms of the agreement between the respondent and Messrs. Pashley were, *inter alia*, that the goods should be shipped against a letter of credit to be opened by the respondent and that the goods should travel for the account and at the risk of the purchaser.

About March 1948, when it appeared probable that both these orders might arrive about the same time, the respondent requested the appellant to arrange that, instead of opening a letter of credit for the second order, payment should be effected by cash against documents, and on the 8th April, 1948, as appears from exhibit 18, the respondent wrote to Messrs. Pashley : " We should be much obliged if you could arrange despatch of the above orders on cash against documents basis assuring you in advance of payment of our sight draft." The goods, the subject of both orders, arrived in Cyprus on the 4th August, 1948, on board S.S. " Memphis ". The goods in the first order were consigned to the respondent but the bills of exchange in respect of the second order were drawn on the appellant. The respondent paid for and took delivery of the first order ; but the appellant paid for and took delivery of the second

order. On the 20th August the respondent who lived and worked at Famagusta, the port of entry, saw his name on the crates containing the second order which were being sent from that port to the appellant in Nicosia. On seeing the crates containing the second order the respondent wrote to the appellant on the same day asking for a copy of the second order and also adding: "if you have any news of it I shall be expecting your reply". The appellant replied on the 24th August that: "We have in compliance with your wish written to the firm in time and succeeded in cancelling your order". In fact, the appellant never cancelled the order with Messrs. Pashley but took over the order from the respondent. The respondent strenuously denied that he had ever cancelled the order, but the appellant continued to maintain that the respondent had abandoned his interest in the contract, and the appellant accordingly disposed of the goods himself for his own account. The respondent then instituted these proceedings claiming damages for the wrongful conversion of his property, the subject-matter of the second order, and claiming £103 damages.

The trial Court held that Messrs. Pashley on shipping the goods had no intention of retaining the ownership thereof and states: "From the authorities it is clear, and I need not cite any, that in a C.I.F. contract, as the present one, the property passes to the buyer the moment the goods are appropriated to the contract and placed on board the ship unless there is something which shows the intention of the seller to keep the property in them until payment. I can find in this case no such evidence."

Since the Court considered that the property in the goods had passed to the respondent upon shipment and there had not been any cancellation of the contract as between Messrs. Pashley and the respondent, the respondent was entitled to the possession of the goods when they arrived and the action of the appellant in converting them to his own use rendered him liable to pay their market value to the respondent.

[The judgment next dealt with a point under section 58 of the Civil Wrongs Law (Cap. 9): this section was repealed by the Civil Wrongs (Amendment) Law, 1953 (No. 38/53) section 18.]

The order of the trial Court is accordingly set aside: the case to be sent back for the determination of the matters referred to in this judgment, and either this claim be dismissed with costs or judgment be entered for the respondent in the sum of £8. 8*s.* 8*p., with costs at the discretion of the Court. The appellant is in any event entitled to the costs of this appeal.*