

1962  
May 3  
—  
YIANNAKIS  
KYRIACOU  
POURIKOS  
v.  
MEHMED FEVZI

[WILSON, P., ZEKIA and JOSEPHIDES, JJ. and TRIANTAFYLLIDES  
Ag. J.]

YIANNAKIS KYRIACOU POURIKOS (No. 1),  
*Appellant (Defendant),*

v.  
MEHMED FEVZI,  
*Respondent (Plaintiff).*

*(Civil Appeal No. 4344).*

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*Appeal—Evidence—Hearing of fresh evidence in Appeal Court—Proper application must be made—Opportunity to other party to cross-examine on fresh evidence must be given.*

At the opening of the appellant-defendant's appeal the respondent-plaintiff's counsel made an application to have the evidence of a witness taken afresh.

The Appeal Court in acceding to this application intimated that :

(1) Proper application supported by affidavit(s) must be made.

(2) Notice of such application must be served on the appellant-defendant.

(3) The appellant-defendant may request the Court or a Judge to order the deponent(s) to attend for cross-examination under the Civil Procedure Rules, 0.39, r.1.

*Case adjourned sine die. Respondent-plaintiff to pay the costs of today in any event.*

**Application to hear fresh evidence.**

Application to hear fresh evidence made by respondent in the course of the hearing of an appeal against the judgment of the D. Ct. of Famagusta (Vassiliades, P.D.C. and Ekrem, D.J.) dated the 8/4/61 (Action No. 141/60) whereby judgment was given for plaintiff in the sum of £441.225 for damages for personal injuries sustained by him in a road collision.

*N. Zomenis* for the appellant.

*M. Fuad Bey* with *O. Mehmet* for the respondent.

The judgment of the Court was delivered by :

WILSON, P. : This is an application by the plaintiff made at the opening of the defendant's appeal from the judgment of the District Court of Famagusta on 8.4.61.

We are prepared to give the respondent the opportunity to take the proper procedure to apply to this Court to have the evidence of Dr. Rose taken. This will entail a proper application supported by affidavit(s). Notice of the application will have to be served on the appellant who may request the Court or a Judge to order the deponent(s) to attend for cross-examination under the Civil Procedure Rules, 0.39, r.1., before an order is made disposing of this application.

In any event, under such circumstances this appeal cannot proceed to-day and will have to be adjourned *sine die*. We are prepared to give the respondent this opportunity upon the undertaking to pay the costs of today to the appellant in any event.

WILSON, P. : I have to ask you, do you wish to pursue the application or not?

FUAD BEY : Yes, we wish to pursue the application and we will follow the directions which have been given.

WILSON, P. : I should also indicate that unfortunately this may mean that this appeal will not be concluded before the fall. Mr. Justice Triantafyllides will be leaving Cyprus at the end of May, and of course in the meantime, we are both members of the Commission of Enquiry.

FUAD BEY : We appreciate that.

WILSON, P. : The costs of today will be paid to the appellant in any event.

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*Hearing of the appeal adjourned  
sine die. Leave to proceed by  
summons granted on terms.*