

FISHER,
C.J.
&
STUART, J.
1923
June 11

[FISHER, C.J. AND STUART, J.]

NICOS G. ICONOMIDES

v.

GEORGHIOS HAJI NICOLA

EX PARTE ARISTODEMOS PHOINIEFS.

PROCEDURE—EVIDENCE BY AFFIDAVIT—COSTS.

At the hearing of an appeal one of the parties on whom notice of appeal had been served, did not appear. An affidavit was filed to prove service of the notice of appeal.

The Court disallowed the costs of the affidavit.

This was an appeal by the Plaintiff from an order of a District Court. The Defendant did not appear. The Court allowed the appeal with costs but disallowed the costs of proving service of notice of appeal on the Defendant by affidavit, and the judgment on that point only is reported.

Triantafyllides for the Appellant.

N. G. Chrysafines for A. Phoiniefs.

Judgment: The cost of proof of service by affidavit and of the giving of evidence on affidavit in support of an application, or for any other purpose should not be allowed unless it can be definitely shown that such a mode of proof is cheaper than proof by oral evidence or that, by no fault of the party, oral evidence is impossible. Generally speaking oral evidence is much cheaper, and more satisfactory than evidence on affidavit. In the case of applications for interim orders for instance, which should not be treated as mere orders of course, the Judge can test a witness by questioning him as to the existence, or probability of the existence, of necessity or desirability for making such an order and the frequent breaches of O. 15, rr. 14, 15 would not occur.

For the purpose of making an affidavit the deponent has, as a rule, to come to the place where the Court sits in order to duly swear it so that the costs are not increased in that way by requiring oral evidence.