

[BELCHER, C.J., SERTSIOS AND FUAD, JJ.]
PAPA CONSTANTINOS ECONOMOU

1929.
Nov. 11.
ECONOMOU
v.
IOANNOU.

v.

LAMBROS PAPA IOANNOU.

Civil Procedure—Judgment of District Court of kind not appealable except by leave—Application made to Supreme Court within three months from judgment—Power of Court to extend time for appeal before leave to appeal obtained—C.C.J.O., 1927, Clause 33—Order XXI, Rules 1, 7, 9.

The District Court on 21st June, 1929, gave judgment for plaintiff for 1s. with costs. On 23rd August, 1929, defendant applied to the Supreme Court for leave to appeal. The application came on 5th September, 1929, before a Judge in Chambers who referred it into Court and also made an order extending time for appeal to 21st November, 1929. The application for leave came before the Court on 11th November, 1929.

Held, that the Judge had power to make the order of extension and that consequently the application was in time.

Application by defendant for leave to appeal from judgment of District Court of Limassol (No. 442/27). The case is reported on the preliminary objection only.

Lanitis for plaintiff (respondent on application):

The appeal is out of time under Order XXI., Rule 9, since no notice of appeal was lodged within three months of the judgment, which have now expired. The judge had no power to make the order for extension, for when he purported to do so no right to appeal had yet been obtained and there can be no extension of a non-existing right. *Malamatenio v. Ratib* (1).

Triantafyllides for applicant: No extension was obtained in that case.

JUDGMENT:—

BELCHER, C.J. (delivering the judgment of the Court):

There is nothing in Order XXI., Rule 9, to suggest that the right it gives of extending the time for lodging an appeal is limited to cases where no leave is necessary. In *Malamatenio v. Ratib* no application for extension was made, but the Court plainly indicated their view that if it had been made within the four months (now three months) within which an appeal could be lodged, it would have been within the power of the Supreme Court to grant it. The objection fails.

Application granted.