1941
July 9

APHRODITE N. VASSILIADES v. ARTEMIS N. VASSILIADES AND ANOTHER.

[CREAN, C.J., AND HALID, J.]

(July 8 and 9, 1941)

APHRODITE N. VASSILIADES, *Appellant,*

v.

ARTEMIS N. VASSILIADES AND ANOTHER,

Respondents.

(Civil Appeal No. 3705.)

Fraudulent transfers and mortgages—Setting aside—Fraudulent Transfers Avoidance Laws, 1886 and 1927, sections 2 and 3—Intent to hinder or delay creditors—Onus of proof—Fair trial—Bias and want of impartiality of Judge—Disqualification of Judge—Improper or unreasonable conduct of parties—Cross-examination—Judge's discretion—Duty of Appellate Court—On appeal from a Judge—On appeal from the verdict of a jury—Appeal by way of rehearing.

The first respondent, a brother of the appellant, having failed to obtain satisfaction from a judgment against his father, took out a summons, under sections 2 and 3 of the Fraudulent Transfers Avoidance Law, No. 7 of 1886, as amended by section 2 of Law 10 of 1927, claiming that certain transfers and mortgages to the appellant by their father should be set aside "as effected with intent to hinder or delay" the father's creditors and in particular the first respondent.

The District Court found that at the time of the transfers to appellant actions for large amounts were pending against the transferor, that from the year 1920 until the present time the transferor was unable to meet his debts, and that the onus being on the appellant to prove that such transfers were made bona fide and not with intent to hinder or delay creditors, she failed to discharge it, and judgment was given against her. From this judgment she appealed to the Supreme Court on grounds, *inter alia*—

(*a*) of disqualification of the acting President of the District Court to try the action because he had been an Official Receiver when the petition against the transferor was filed, and had expressed an opinion adverse to the appellant in another case; and

(*b*) of irregularities in the trial.

Held, that—

(1) A judge must have the same parties before him from time to time in different cases, but this is not a good reason for applying to have another judge appointed to hear a particular case:

(2) The proceedings in the District Court were unsatisfactory but all the difficulties had arisen from the peculiar conduct of the appellant and her different advocates;

(3) The District Court had come to the right conclusion on the facts and law.

Judgment of the District Court of Famagusta affirmed.

On appeal to the Privy Council the two main issues were (1) whether the District Court and the Supreme Court were right in upholding the respondents' claim and (2) whether there were circumstances in the conduct of the trial before the District Court which entitled the appellant to object that the case had not been fairly tried.

Held, by the Privy Council, affirming the judgment of the Supreme Court, that—

(1) The law of Cyprus as stated in sections 2 and 3 of the Fraudulent Transfers Avoidance Laws, 1886 and 1927 makes the intent of the transferor the crucial test for deciding whether the transfer or disposal is to be deemed to be " fraudulent ". The fraud contemplated is not what has been called " moral " fraud ; but consists in the intention of the transferor to " hinder " or " delay " (that is something less than " prevent ") his creditors. Whether or not that intention exists, must be decided as an inference of fact on consideration of all the circumstances of the case.

(2) The decision that the first respondent had satisfied the onus of proving that the conditions of section 2 (2) and (3) were established, which was arrived at by the Courts in Cyprus, the Judges of which have a knowledge of local conditions and habits which their Lordships do not pretend to possess, is not one which they would lightly interfere with. But they feel satisfied on a consideration of all the evidence and documents that it is a right conclusion, and that the judgment should be affirmed.

(3) As the acting President of the District Court had taken no part in or in regard to the proceedings to set aside the transfers, either when he was Official Receiver or in any other capacity, and nothing was alleged or suggested to show that he was not capable of bringing an entirely impartial mind to the hearing of the particular application, no reasonable person could think that he was biassed or in substance and in fact liable to be even suspected of bias merely because in the past in an official position he had dealt with matters in which the appellant was concerned.

(4) It is always highly desirable that any proceeding should be dealt with by judges who are above suspicion, however unreasonable, of being biassed. But as the proceedings have been in fact held, they cannot be set aside except on legal proof of bias, of which there is none.

(5) Parties cannot complain whose improper or unreasonable conduct has led to a departure from the more regular course of procedure, so long as no substantial injustice is done.

(6) Cross-examination is one of the most important processes for the elucidation of the facts of a case and all reasonable latitude should be allowed, but the Judge has always a discretion as to how far it may go or how long it may continue. A fair and reasonable exercise of his discretion by the Judge will not generally be questioned by an Appellate Court.

1941
July 9

APHRODITE N. VASSILIADES v. ARTEMIS N. VASSILIADES AND ANOTHER.

The facts appear in the judgment of the Supreme Court.

G. Rossides and Michaelides for the appellant.

G. Achilles and P. N. Paschalis for the respondent.

The judgment of the Supreme Court of Cyprus was delivered by :

CREAN, C. J. : This appeal arises out of an action instituted by Artemis N. Vassiliades against his father Hadji Nicola Vassiliades in the Famagusta District Court. The action was brought by Artemis on the 12th November, 1935, to recover money alleged to be due to him by Hadji Nicola, and judgment for £428. 10*s*. was given on the 25th June, 1938, in his favour together with interest and costs.

On the 24th of April, 1939, an application was filed by Artemis under sections 2 and 3 of Law 7 of 1886 as amended by section 2 of Law 10 of 1927, to set aside transfers of property to Afroditi Vassiliades, a daughter of Hadji Nicola Vassiliades. This Law was passed in Cyprus to provide for the setting aside of transfers of property made to hinder creditors.

The wording of section 2 as amended by Law 10 of 1927 is :—

"2.—(1) Every gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property made by any person with intent to hinder or delay his creditors or any of them in recovering from him, his or their debts shall be deemed to be fraudulent, and shall be invalid as against such creditor or creditors ; and, notwithstanding any such gift, sale, pledge, mortgage or other transfer or disposal, the property purported to be transferred or otherwise dealt with may be seized and sold in satisfaction of any judgment debt due from the person making such gift, sale, pledge, mortgage or other transfer or disposal.

(2) In any application under the provisions of this Law to set aside a transfer or assignment of any property made to any parent, spouse, child, brother, or sister of the transferor or assignor otherwise than in exchange for money or for other property of equivalent value or for good consideration the onus of proving that such transfer or assignment was bona fide and not made with intent to hinder or delay his creditors shall rest upon the transferor or assignor and upon the person to whom such transfer or assignment has been made.

(3) No sale, mortgage, transfer or assignment made in exchange for money or other property of equivalent value shall be voidable under the provisions of the Law,

unless the purchaser, mortgagee, transferee, or assignee shall be shown to have accepted it with knowledge that such sale, mortgage, transfer, or assignment was made by the vendor, mortgagor, transferor, or assignor with intent to delay or defraud his creditors."

Section 3 is as follows :—

"3. Any gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property deemed to be fraudulent under the provisions of section 2 of this Law whether made before or after the commencement of an action or other proceeding wherein the right to recover the debt has been established may be set aside by an order of the Court, to be obtained on the application of any judgment creditor made in such action or other proceeding, and to the Court before which such action or other proceeding has been heard or is pending."

Artemis, the son of Hadji Nicola, filed an affidavit in support of his application in which he sets out the different transfers of property, movable and immovable, which were made by Hadji Nicola to his daughter Afroditi, a sister of Artemis, who filed the application.

The affidavit of Artemis shows that property comprised in 56 title-deeds and in all 119 pieces of immovable property were transferred to Afroditi, and all these transfers were made in May, June and July, 1936, and that the total value of them is round about £2,000. An affidavit in reply and opposing this application was filed by Afroditi on the 15th May, 1939, in which she explains how it came about that all these properties were transferred to her by her father Hadji Nicola. It is stated by her that she earned money as a seamstress, that she was given £30 to £40 a year by her mother and that she had money placed on interest. Other explanations as to how she amassed this large sum of money, and which she alleges she advanced to her father, are given by her. Prior to this application Afroditi had got judgments against her father Nicola. One judgment was obtained on the 29th November, 1937, in the absence of Hadji Nicola. The other on the 11th April, 1938, also in his absence. Subsequently Afroditi filed a petition in bankruptcy against her father Hadji Nicola and according to the father he did not oppose it because Afroditi and her brother—and his son—Afxenti pursuaded him not to, and so he was adjudicated a bankrupt in September, 1939.

The application of Artemis to set aside these transfers to Afroditi from their father was heard by the Full District Court of Famagusta on the 6th May, 1941, on the 7th May, 1941, and on the 16th May, 1941, and judgment was given in favour of the applicant Artemis; the District Court

1941
July 9

APHRODITE N. VASSILIADES v. ARTEMIS N. VASSILIADES AND ANOTHER

deciding that the transfers to Afroditi of the lands, movables and mortgages to her as set out in Schedule A, B and C of the application were fraudulent and should be set aside as they hinder and delay the creditors of Hadji Nicola. The Court also set aside the transfer of two of the mortgages to Afroditi by her father and numbered 1 and 2 in Schedule D attached to the application for the same reason.

The application was not opposed by Hadji Nicola or by the trustee in his bankruptcy and the District Court found that at the time the transfers were made to Afroditi actions for large amounts were pending against him, amongst them this action of Artemis who got judgment for £428. 10*s*., but could not levy execution on foot of it as there was no free property of Hadji Nicola on which to do so, and it is now still unsatisfied.

The District Court was satisfied that from the year 1920 until the present time Hadji Nicola was not in a position to meet his engagement with his creditors.

The Court also found that the transfer of the mortgages to Afroditi in Schedule D which she says were transferred to her by way of dowry were fraudulent and set them aside. And it is correctly pointed out by the Court that the onus was on Afroditi by Law 10 of 1927 to prove that such transfers were bona fide and not made with intent to hinder or delay the creditors of Hadji Nicola, her father. That onus the Court found had not been discharged by her. Consequently they decided against her on that issue. And on the issue as to mortgage 3 in Schedule D of the application the Court found that applicant had failed to prove the alleged transfer.

An appeal was lodged to this Court against that decision on the 5th June, 1941. The appeal was heard on the 8th July, 1941, and dismissed immediately after hearing.

The first ground of appeal was that Mr. Howard-Flanders, acting President of the District Court, Famagusta, should not have sat as a member of the Court inasmuch as he was Official Receiver when the petition against Hadji Nicola was filed and as Official Receiver he had expressed his opinion to Afroditi, the appellant herein, in another case. It is thought by this Court that should not have been made a ground of appeal because it is a reflection on him that he allowed himself to be biassed against appellant by facts that came before him in another case. It seems to us that a judge must have the same parties before him from time to time in different cases, but in our opinion that is not a good reason for applying to have another judge appointed to hear a particular case or a good ground of appeal if he does hear the case.

The second ground of appeal is that the District Court acted wrongly in not allowing the appellant herein to require the L.R.O. clerk to produce books. But we do not feel like criticising the opinion expressed by the District Court, which was, that the appellant had ample time to take steps for the production of the books and had failed to do so. It is set out in the 4th ground of appeal that the Court did not take a full note of the evidence but that ground was abandoned. The 5th, 6th 8th and 9th grounds of appeal are as to the conduct of the case in the Court below and it is gathered from them that the appellant wants to shew she did not get a fair trial of her case. The cross-examination of Hadji Nicola on her behalf was not allowed to continue after it had lasted for 3 hours. The Court below stopped it after that time being of opinion it was irrelevant. And that Afxentis was not allowed to continue his examination-in-chief is considered by the appellant a hardship on her.

The appellant complains that it was unfair to her not to grant her an adjournment on the 16th May, 1941, and that Mr. Achilles, advocate for Artemis, should not have been allowed to appear for him, as prior to that she had explained her case to him. Further that the Court gave judgment against her without giving her a reasonable opportunity to appoint an advocate.

From reading the record of the proceedings in the District Court this case appears to have been an exceedingly difficult and troublesome one to hear. On the case being called Mr. Ierodiakonou appeared for Afroditi, the appellant, and he raised a preliminary objection. That objection was not allowed, so he asked leave to withdraw from the case. In spite of this withdrawal, however, he again intervenes in the hearing of the case, and when questioned by the Court he says he appears for the appellant to bring objections on certain points of law only and that he does not appear to oppose the case on the merits, and that is borne out by the record of proceedings which shews that Afroditi, the appellant, cross-examined the witnesses herself on the first day's hearing.

On the second day of the hearing, which was the 7th May, the record shews that Afxentis Vassiliades appeared for Afroditi, the appellant, and this lawyer it seems is a brother of hers and went into the witness box and gave evidence. The hearing was resumed on the 16th May and on this day Mr. Michaelides with Mr. Afxentis Vassiliades appeared for the appellant Afroditi. Mr. Afxentis again went into the witness box but before his cross-examination began he was committed by the Court for contempt of Court under clause 196 of the C.C.J.O., 1927, for one month for

1941
July 9

APHRODITE N. VASSILIADES
v.
ARTEMIS N. VASSILIADES AND ANOTHER.

refusing to answer a relevant question. After this, though the appellant was asked if she had any more witnesses and if she wanted to address the Court she replied that she could not do so because she had no advocate. But there is nothing to shew where Mr. Michaelides had disappeared who appeared for her a few minutes before.

On the whole we cannot think the proceedings were satisfactory, but all the difficulties appear to have arisen from the peculiar conduct of the appellant and her different advocates. And if she feels aggrieved it appears to us the fault was hers and that of her brother and lawyer Afxentis Vassiliades that the case did not move on more smoothly. And as grounds of appeal we do not think we can consider them as such considering the whole behaviour of her and her legal advisers.

The remaining grounds of appeal numbered 3 and 10 in the notice of appeal filed are that the judgment was against the weight of evidence. We take it that the meaning of these grounds is that the District Court could not reasonably come to the conclusion it did on the evidence before it as to these different transfers of property to the appellant.

It is admitted by both sides that during the months of May, June and July, 1936, Hadji Nicola transferred to Afroditi, the appellant, property and mortgages of the approximate value of £2,000. It is also admitted that Afroditi knew at the time these transfers were made that there were two actions by Artemis against Hadji Nicola pending. And it was said on her behalf on this appeal, and in her affidavit opposing the application, that the transfers were made to her mainly for monies advanced by her to her father and that she began advancing money to him as far back as 1920.

There was evidence before the District Court that in the year 1935 there was a consultation between Nicola and the members of his family as to what was due to each child by Nicola, the father, and at that consultation Afroditi did not claim anything as due from Nicola to her.

There was evidence before the Court that Afroditi instituted two actions against Nicola for substantial sums of money on foot of bonds and that Nicola did not raise any defence to them though he said the money was not due and that he omitted to do so in order to prevent Artemis getting anything on foot of his judgment.

How she became possessed of these large sums of money is explained by her counsel and in her affidavit. It is said that it was obtained by her from work as a seamstress, by savings, by selling petrol, and gifts by her father of £40 a year and a gift from her mother of £300.

Nicola, the father of Afroditi, in his evidence on the hearing of the application says that he transferred immovable property valued £900 to Afroditi, and that he did so not because he owed her any money but to prevent Artemis recovering his debt. He further says that he transferred all his movable property to her for the same reason.

If that evidence had been accepted by the District Court as reliable, then in our opinion, their judgment would have been unassailable on appeal. But it is rejected by the Court and the question then arises, was there evidence in addition to it, on which the Court could reasonably find as it did.

Apart from Nicola's evidence, there was the evidence of Artemis, that in 1935, a year prior to the transfers to her, Afroditi did not claim there was any money due to her by Nicola. There was evidence that civil actions for large amounts were pending against Nicola when these transfers were made. There was evidence that since 1920 Nicola has been on the verge of insolvency.

From this evidence, and from the doubts that must arise in the mind of any normal person as to the possibility of Afroditi amassing over £2,000 by her work as a seamstress and the other ways enumerated, we do not think the conclusion come to by the Court was unreasonable or such as ordinary jurors could not have come to; therefore we think the appeal should be dismissed with costs.

Appeal dismissed with costs.

The appellant's further appeal to the Privy Council was heard by Lord Macmillan, Lord Wright and Lord Clauson.

The arguments appear sufficiently from the judgment of their Lordships delivered by:

March 6, 1944

LORD WRIGHT: The two main issues in the appeal are (1) whether the District Court and the Supreme Court were right in upholding the present respondent's claim that certain transfers and mortgages should be set aside (2) whether there were circumstances in the conduct of the trial before the District Court which entitle the appellant to object that the case had not been fairly tried. If the appellant were to succeed in whole or in part on the former issue, she would be entitled to judgment to that extent on the application. If she were to succeed on the latter issue, she would be entitled to an order for a new trial.

The transfers and mortgages in question were granted to the appellant by her father Hadji Nicola Vassiliades, who was adjudicated bankrupt on a petition filed by the appellant in September, 1939. His trustee in bankruptcy was substituted for him in the proceedings, and is now the second respondent. The first respondent, Artemis N. Vassiliades, a son of the bankrupt and a brother of the appellant, had

1941
July 9

APHRODITE N. VASSILIADES v. ARTEMIS N. VASSILIADES AND ANOTHER.

obtained two judgments against his father, one dated the 10th June, 1937 for £200 with interest and costs on two bonds, in an action commenced on the 7th November, 1935, the other dated the 25th June, 1938 for £428. 10*s*. with interest and costs in an action commenced by him on the 12th November, 1935. It is this latter action and judgment out of which these proceedings arise. The respondent having failed to obtain satisfaction for his judgment, on the 24th April, 1939, took out a summons claiming that the transfers and mortgages set out in Schedules A, B, C and D all of which were executed in favour of the appellant, should be set aside " as effected with intent to hinder or delay " his father's creditors and in particular the first respondent. The appellant intervened in the summons as *ex parte* respondent. The respondent filed an affidavit setting out the grounds of his application, which was based on Law 7 of 1886, sections 2 and 3, as amended by section 2 of Law 10 of 1927. The sections in their amended form, are as follows :—

" 2.—(1) Every gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property made by any person with intent to hinder or delay his creditors or any of them in recovering from him, his or their debts shall be deemed to be fraudulent, and shall be invalid as against such creditor or creditors; and, notwithstanding any such gift, sale, pledge, mortgage or other transfer or disposal, the property purported to be transferred or otherwise dealt with may be seized and sold in satisfaction of any judgment debt due from the person making such gift, sale, pledge, mortgage or other transfer or disposal.

(2) In any application under the provisions of this Law to set aside a transfer or assignment of any property made to any parent, spouse, child, brother, or sister of the transferor or assignor otherwise than in exchange for money or for other property of equivalent value or for good consideration the onus of proving that such transfer or assignment was bona fide and not made with intent to hinder or delay his creditors shall rest upon the transferor or assignor and upon the person to whom such transfer or assignment has been made.

(3) No sale, mortgage, transfer or assignment made in exchange for money or other property of equivalent value shall be voidable, under the provisions of the Law, unless the purchaser, mortgagee, transferee, or assignee shall be shown to have accepted it with knowledge that such sale, mortgage, transfer, or assignment was made by the vendor, mortgagor, transferor, or assignor with intent to delay or defraud his creditors.

3. Any gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property deemed to be fraudulent under the provisions of section 2 of this Law whether made before or after the commencement of an action or other proceeding wherein the right to recover the debt has been established may be set aside by an order of the Court, to be obtained on the application of any judgment creditor made in such action or other proceeding, and to the Court before which such action or other proceeding has been heard or is pending."

The appellant opposed the application. But both before the District Court and the Supreme Court her opposition has been overruled and the transfers and mortgages have been set aside.

In 1936 between the 23rd May, 1936 and the 26th June, 1936, while the first respondent's two actions were pending against Hadji N. Vassiliades hereinafter called Vassiliades, Vassiliades executed eight transfers, all but one of immovable property and all in favour of the appellant. On the 25th June, 1936, one Hortovadji commenced an action against Vassiliades and another, and on the same day an interim order was made restraining Vassiliades from alienating his immovable property. Thereafter on the 30th June, 1936, Vassiliades made in favour of the appellant a bond for £86 payable on the 1st August, 1936, and on the 23rd July, 1936, purported by contract to sell to the appellant movable properties for £792 and about the same period transferred to the appellant two mortgage bonds for £50 each. Thus in the period between the 23rd May, 1936, and the 22nd June, 1936, Vassiliades transferred to the appellant, partly before and partly after the commencement of Hortovadji's action and while the first respondent's two actions were pending, properties of a total value, even if the assessed values were taken, of over £2,000. In addition to this extraordinary sequence of events, there was also evidence before the Courts which they accepted that the business of Vassiliades did not go well after 1920 and that his financial position at all times since 1920 had been serious and critical. There was other evidence to the same effect.

The law of Cyprus as stated in the sections cited above makes the intent of the transferor the crucial test for deciding whether the transfer or disposal is to be deemed to be "fraudulent." The fraud contemplated is not what has been called "moral" fraud; but consists in the intention of the transferor to "hinder" or "delay" (that is something less than "prevent") his creditors. Whether or not that

1941
July 9

APHRODITE N. VASSILIADES v. ARTEMIS N. VASSILIADES AND ANOTHER.

intention exists, must be decided as an inference of fact from considering all the circumstances of the case. Here the embarrassed position of Vassiliades over a period of years, the actions against him and the judgments recovered and unsatisfied and in addition the most remarkable sequence of substantial conveyances within so short a period of time constitute very strong evidence. Vassiliades gave evidence but the Judge refused to credit anything he said. The appellant herself gave no evidence at all, in the witness box at the trial. Statements she made in an affidavit to show that the unsigned transactions were bona fide and for consideration were referred to, but rejected by the Courts. There was in their Lordships' judgment ample evidence for the conclusion of both Courts below that the transactions were not bona fide. It is true that under section 2 (1) of the Act the onus is on the party seeking to set aside the transfers to prove his case, but the Courts below have considered the case on the footing that the onus so lay. Their Lordships also here proceed on the same view and arrive at the same conclusion as the Courts below. A question was raised as to the exact effect of the words "good consideration" in section 2 (2) which deals with transfers as between certain members of a family, otherwise than in exchange for money or other property of equivalent value or for good consideration. Good consideration in this statute, it was conceded, means something more than natural love and affection. It was said that even if it was accepted in respect of the two bonds included in Schedule D that there was no valuable consideration, there was "good" consideration because the transfer was by way of dowry, which it was said was good consideration like marriage consideration. The Courts below held this suggestion irrelevant because the appellant was neither married nor on the point of being married. There could thus be no question of applying in the appellant's favour section 2 (2) which shifts the burden of proof and places the onus of proving bona fides on the transferor and transferee because the conditions of sub-section 2 had not been fulfilled. But the Courts below have dealt with all the transfers on the footing that the first respondent had to prove that the conditions of section 2 (2) and (3) were established, and that the onus throughout was on him. The decision that the first respondent had satisfied this onus, which was arrived at by the Courts in Cyprus, the Judges of which have a knowledge of local conditions and habits which their Lordships do not pretend to possess, is not one which they would lightly interfere with. But they feel satisfied on a consideration of all the evidence and documents that it is a right conclusion, and that the judgment should be affirmed.

But it is still necessary to consider the application of the appellant for a new trial on the various grounds suggested. These can best be considered separately.

The first objection is that the judgment appealed from is a nullity on the ground that the acting President of the District Court was not competent to sit but was disqualified because he had been Official Receiver when the petition against Vassiliades was filed and had expressed an opinion adverse to the appellant in another case. This objection alleges bias and want of impartiality on the part of the Judge. It is a most serious objection, the effect of which, if it is sustained, is that the trial must be held to have been *coram non judice* and the judgment a nullity. The simplest type of bias is where the Judge is shown to have any pecuniary interest in the result of the proceedings : in that case it will be held at once that he is disqualified, however small the interest and however clear it may be that his mind could not have been affected. A striking illustration of this type is afforded by *Dimes* v. *Grand Junction Canal Coy.* 3 H.L.C. 759, where that fact that the Lord Chancellor who presided at the hearing in the House of Lords had inadvertently failed to disclose a small interest he had in the respondent Company was held to vitiate the judgment of the House. But there are other circumstances which may be relied upon as justifying an objection that a Judge is disqualified for bias. It is then a question of substance and fact whether the objection is good. In *Allison* v. *General Medical Council* [1894] 1 Q.B. 750, Lord Esher at p. 759 explained the criterion for rejecting the objection to be " not that any perversely minded person cannot suspect him but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed." That was a case in which bias was alleged on the ground that the person adjudicating had actively co-operated in bringing the charges which were being investigated, but the Court held that as he had taken no part in the prosecution, the objection of bias failed. In the present case the acting President of the District Court had taken no part in or in regard to the proceedings to set aside the transfers, either when he was Official Receiver or in any other capacity. Nothing is alleged or suggested to show that he was not capable of bringing an entirely impartial mind to the hearing of the particular application. No reasonable person could think that he was biassed or " in substance and in fact " liable to be even suspected of bias merely because in the past in an official position he had dealt with matters in which the appellant was concerned. Their Lordships agree with the Supreme Court in rejecting this objection. It might perhaps have been better if the hearing had been adjourned

1941
July 9

APHRODITE N. VASSILIADES v. ARTEMIS N. VASSILIADES AND ANOTHER.

until the Governor had dealt with the application to him to nominate another judge. It is always highly desirable that any proceeding should be dealt with by persons who are above any suspicion, however unreasonable, of being biassed. But as the proceedings have been in fact held, they cannot be set aside except on legal proof of bias, of which there is none.

The other matters of objection are fully dealt with and rejected by the Supreme Court, who have thus summed up their conclusion: "On the whole we cannot think the proceedings were satisfactory, but all the difficulties appear to have arisen from the peculiar conduct of the appellant and her different advocates. And if she feels aggrieved it appears to us the fault was hers and that of her brother and lawyer Afxentis Vassiliades, that the case did not move on more smoothly. And as grounds of appeal we do not think we can consider them as such, considering the whole behaviour of her and her legal advisers."

Broadly, their Lordships take the same view. It is a matter of public policy that justice should not merely be done but should appear to be done. Judges, however, are only human, and their patience is sometimes sorely tried by counsel and litigants. It is always to be regretted if their patience even appears to give way. But the administration of justice depends on the co-operation of the judges and the parties. Parties cannot complain whose improper or unreasonable conduct has led to a departure from the more regular course of procedure, so long as no substantial injustice is done.

Their Lordships do not think it necessary to examine in detail all the complaints made on behalf of the appellant. It may be enough to say that, after carefully examining into them, their Lordships are satisfied that there has been no substantial miscarriage of justice. Only if they had been so satisfied could a new trial be ordered.

One objection taken was that the District Court stopped the cross-examination of a witness by the appellant's brother, a barrister who at one stage appeared on her behalf. After it had lasted three hours (it is true through the medium of an interpreter) the Court stopped it as irrelevant. Now cross-examination is one of the most important processes for the elucidation of the facts of a case and all reasonable latitude should be allowed, but the Judge has always a discretion as to how far it may go or how long it may continue. A fair and reasonable exercise of his discretion by the Judge will not generally be questioned by an Appellate Court.

As Lord Sankey L.C. said in the *Mechanical and General Inventions* case [1935] A.C. 346, at p. 360, " A protracted and irrelevant cross-examination not only adds to the cost of litigation, but is a waste of public time." The Lord Chancellor went on to say that such a cross-examination may become indefensible. Before their Lordships the appellant's counsel did not suggest that any material cross-examination had been prevented. This ground of objection is, in their Lordships' opinion, ill-founded.

It is not easy to follow all the peculiar features of the conduct of the appellant in Court or of her counsel, who changed from time to time. For instance, there appears to have been no sufficient reason why her brother Afxentis, who had appeared as her counsel and then gave evidence as her witness, refused at the outset of his cross-examination to answer a relevant question on the pretext that he had not finished his examination-in-chief. He was then committed for contempt and ordered to pay a trifling fine, with the alternative of a month's imprisonment. His tone is reported to have been angry and his demeanour disrespectful. Another of the appellant's counsel had already withdrawn. The appellant was asked if she desired to call witnesses or address the Court, but she did not, because she said she had no advocate. She did not even herself give evidence.

Objections were taken to the form of the judgments in the lower Court. It was said that the judgment of the District Court did not sufficiently deal with all the various points which had been taken. The judgment is certainly brief and would have been more helpful to the Appellate Court if it had been fuller. It is desirable that a trial Court should deal with reasonable fulness with the facts as it finds them. But the judgment of the District Court deals clearly and precisely with the essential points. The judgment of the Supreme Court is careful, full and accurate. It is, however, objected that the final words of the judgment show that the Court did not do its duty, because an appeal like the present is an appeal by way of rehearing in Cyprus as it is in England under the rules of both Courts. The words of the judgment of the Supreme Court on which the objection is based are: " We do not think the conclusion come to by the Court [*sc.* the District Court] was unreasonable or such as ordinary jurors could not have come to, therefore we think the appeal should be dismissed with costs."

Their Lordships, however, do not understand these words, which are not indeed very accurately expressed, as meaning that the duty of an Appellate Court sitting on appeal from

1941
July 9

APHRODITE N. VASSILIADES v. ARTEMIS N. VASSILIADES AND ANOTHER.

a judge is the same as that of an Appellate Court sitting on appeal from the verdict of a jury. In the former case the appeal is made by the rules a rehearing; the appellate judges are judges of fact. In the latter case the appellate judges are not judges of fact. As Lord Atkin said in the *Mechanical and General Inventions* case (*supra*), at p. 369, speaking of a case where there is a jury, "that tribunal and that tribunal alone is the judge of fact, and no Appellate Court can substitute its own findings for those of the lawful tribunal." The contrasted case of an appeal by way of rehearing is examined in *Powell* v. *Streatham Manor Nursing Home* [1935], A.C. 243. Their Lordships see no reason to think that the Supreme Court neglected its duty to rehear the case, but they have thought it better to say what they have in order to avoid any misunderstanding of what is the true rule in such appeals.

Their Lordships wish finally to mention two separate matters. (1) They rejected an application on behalf of the appellant to introduce fresh evidence contained in an affidavit. It is a sufficient reason for their doing so that no explanation was given why it was not tendered in the District Court, and no proof was given that it was impossible to do so. Moreover, counsel for the appellant was unable to say that if the fresh evidence were admitted it would materially affect the result of the case. (2) It is said that the value of the property in question is considerably in excess of the debt to the first respondent. That matter must be dealt with by the Court in Cyprus, to whom their Lordships refer it, to do what is just in the circumstances.

On the whole case their Lordships are of opinion that the appeal fails and should be dismissed with costs.

They will humbly so advise His Majesty.