[HALLINAN, C. J. and ZEKIA, J.]
(February 21, 1956)

COSTAS TRIANTAFYLLIDES of Limassol AND ANOTHER, *Appellants*,

v.

CHRISTOFOROS POLEMITIS MALAKASSAS of Limassol, *Respondent*.

(Civil Appeal No. 4151).

1956
February 21

COSTAS TRIANTAFYLLIDES AND ANOTHER
v.
CHRISTOFOROS POLEMITIS MALAKASSAS

Inspection by Court—Inferences drawn therefrom.

During the trial of an action for nuisance, the Court visited the *locus in quo* to listen at the plaintiffs' hotel to the noise from the defendant's cinema. The record of proceedings, including the judgment, indicated that this experience had considerably influenced the Court, who refused an injunction.

Upon **appeal,**

Held: "The experience itself, even if properly taken into consideration by the Court, could hardly be relied upon, for the sound can vary on each occasion according to the film and no doubt the volume can be altered by turning a knob."

Inferences which a Court can properly draw from a view of the *locus in quo* discussed.

Case remitted to District Court for rehearing.

Note: The powers of a judge to follow his own impressions upon a view is the subject of a recent decision:

Buckingham v. *Daily News Ltd.* (1956) 3 W.L.R. 375.

Appeal by plaintiffs from the judgment of the District Court of Limassol (Action No. 1047/53).

M. Houry with *J. Jones* for the appellants.

G. Cacoyannis for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C. J.: In this case the appellants-plaintiffs, who are the owners of an hotel in Limassol, brought an action against the respondent-defendant, who is the owner of an open-air cinema on the other side of the street from the hotel, claiming an injunction to restrain the open-air cinema from creating a nuisance by excessive noise. The trial began on the 25th May, 1954, the evidence was concluded on the 19th June of that year but the further hearing was adjourned in order that the effect of the heightening of a wall might be assessed in reducing the sound reaching the plaintiff's hotel. In

March, 1955, three further witnesses were heard as to the result of these alterations and the case was adjourned for judgment to the 22nd March. In fact judgment was delivered on the 14th September, 1955, when the Court dismissed the plaintiff's claim. Between the adjournment for judgment in March and its delivery in September the defendant also installed an apparatus known as a cinemascope which the appellants allege has greatly increased the sound and therefore aggravated the nuisance.

The trial Court in its short judgment mentions that a number of witnesses were called for the plaintiffs to show that the sound coming from the cinema constituted a nuisance, and that on the other hand a number of witnesses were called to prove the contrary by the defendant. But the Court does not state in its judgment what witnesses it believed or disbelieved. The judgment then goes on to specify certain matters, such as the hotel being situated in a noisy street and there being a winter cabaret near by, which tended to show that residents in the hotel were already subjected to considerable noise. Finally the Court concludes its judgment as follows: "Having this in mind" (presumably the evidence already recapitulated in the judgment) "we are of opinion that though from the evidence we have heard and from our own experience of the place there, there is some noise, this noise is not such in our opinion as to constitute a private nuisance entitling the Court to deal with it with an injunction."

It is not very clear from the concluding remarks of the judgment if the Court when referring to its own experience refers to extra-judicial occasions on which its members had heard the noise coming from the cinema, or whether the Court was referring to a visit made to the *locus in quo* by the Court and the parties and their advocates on the 25th May, 1954, when certain sound films were put on and when the Court listened to the sound in the hotel.

It has been submitted by the appellants that the trial Court was wrong in relying on this experience when reaching their conclusion. In our view there is substance in this submission. A trial Court quite properly can visit a *locus in quo* in order that it can better understand the evidence; it also can inspect and compare objects of real evidence, for instance the handwriting in two documents, or (in passing off actions) labels on two different bottles; it can draw inferences from the demeanour of witnesses, and can bring to its deliberations that common experience of life which is summed up in the expression "common sense".

It is to be regretted that the Court delayed so long in delivering its judgment. When judgment was finally

delivered in September, 1955, it was over a year since the members of the Court had seen the witnesses and they may well have forgotten their demeanour. Since the Court made no finding as to what witnesses it believed or did not believe, we consider that its reliance in part on its own experience of the 25th May must have considerably influenced its decision. A judicial officer may examine evidence and the *locus in quo* but he may not become a witness in the cause which he decides. On the 25th May the members of the Court did not go to inspect some constant or static phenomenon such as a building or a constant smell or sound; they listened to some sound films; and by relying on the experience of that particular event, they became both judges and witnesses in the same cause. That is the chief weakness in the judgment. There is also this: The experience itself, even if properly taken into consideration by the Court, could hardly be relied upon, for the sound can vary on each occasion according to the film and no doubt the volume can be altered by turning a knob.

We consider, therefore, that the judgment of the Court must be set aside and the case sent back to the District Court of Limassol for rehearing.

Upon the rehearing it will be competent for the trial Court to receive evidence as to the installation of a cinemascope, and its effect on the sound.

The appellants are entitled to their costs on the hearing of this appeal but not the costs of the application to hear fresh evidence; but as regards the costs of the trial and retrial, these should be costs in cause.

[HALLINAN, C. J. and ZANNETIDES, J.]
(February 21, 1956)

1. COSTAS PERICLEOUS PITSILLIDES,
2. ANDREAS GEORGHIOU AYFILIOTIS
3. PAVLOS STAVROU PAVLOS, all of Limassol,

Appellants,

v.

THE POLICE, *Respondents.*

(Criminal Appeal No. 2031)

Criminal Law—Criminal Code, section 54 (3)—Membership of illegal organisation — Presumption arising out of possession of documents—Upon appeal substitution of and conviction upon another charge refused.

The appellants distributed leaflets of EOKA, an unlawful association, and were charged under Criminal Code, section 54 (3), which *inter alia* provides that "any person ... who has in his possession any document ...