[HALLINAN C.J.]

REGINA
v.
ELLISON (Special Justice)
Ex parte TIMES PUBLICATIONS LTD.
(*Civil Application No.* 1/57)

Criminal Procedure—Judgment—Record of judgment—Oral judgment — Shorthand note — Transcript not the record of judgment—Rules to be observed by Judges—Criminal Procedure Law, Cap. 14, *section* 110.

Mandamus—Prohibition.

The applicants were convicted by the respondent, sitting as a Justice of the Special Court, of publishing a report likely to be prejudicial to the maintenance of public order, and they were fined. The respondent delivered an oral judgment which was taken down by the stenographer, and the typed transcript was subsequently amended and signed by the respondent. The transcript contained 4000 words ; of which the respondent, in revising his oral judgment, deleted about a quarter and substituted about 200 words.

On motion for orders of mandamus and prohibition it was contended on behalf of the applicants that by refusing to sign the original transcript, without any alterations, the respondent had failed to comply with the provisions of sec. 110 (1) of the Criminal Procedure Law, Cap. 14 ; and that, once he had pronounced judgment and it was recorded in shorthand, he was "*functus officio*" and could be prohibited from altering what was so recorded.

Held : (1) That the transcript of the stenographer's note of the respondent's oral judgment was not the record in writing required by section 110 (1) of the Criminal Procedure Law, Cap. 14. The record consisted of such written record of the judgment as the judge approved and signed. In most cases it would, no doubt, be convenient for the judge to use a transcript of the shorthand note, if any, as a basis for the record, but the transcript was not the record.

(2) That the record of an oral judgment need not contain the identical words of such oral judgment but should record its substance.

Motions dismissed.

Per Curiam : The following rules should be observed by a judge when certifying the record of an oral judgment under the provisions of section 110 (1) of the Criminal Procedure Law, Cap. 14 :—

(i) the judgment signed by the judge should not materially alter what he said when delivering an oral judgment as regards the facts found by him, his rulings or decisions on points of law and the conviction or acquittal of the prisoner on any counts. It would seem desirable that, until the written judgment containing a statement of the sentence or a formal warrant containing the order as to sentence is signed, the

trial Court should have a "*locus poenitentiae.*" Under our procedure much more time is devoted to the question of liability and much less to that of sentence which often involves considerations difficult to evaluate. This is not a question which falls for decision here, and is one that might well be the subject of statutory provision;

(ii) within the limits mentioned in the preceding paragraph, a judge should be free to sign a judgment in the form and style which he approves. For example, it should be open to him to omit any passages of his oral judgment which were not material to what he had to decide, and to state clearly and concisely what may have been badly expressed. In my view he should also be at liberty in his written judgment to alter or add to the reasons for his decisions on points of law given in his oral judgment so long as his findings of fact and the decisions themselves remain unaltered. Of course, once he has signed his written judgment, he cannot submit any further reasons for the consideration of a Court of Appeal especially after certain criticisms of the judgment have been made by the Court of Appeal;

Mattouk v. *Massad* (1943) 2 All E.R. 517 referred to.

(iii) the analogy with the practice upon appeals from an English County Court in civil proceedings should not be carried too far. For example, Smith L. J., in Huddleston's case (15 T.L.R. 238) is reported as saying: "That which a County Court Judge certified as his judgment was conclusive upon the point." In criminal cases our procedure must always guard against a miscarriage of justice. If it is alleged by an appellant that the certified judgment differed from his oral judgment as to findings of fact, as to directions on or decisions of law, or as to the verdict or the sentence so materially as to amount to a miscarriage of justice, then it must be competent for the Supreme Court upon appeal to enquire into the truth of such allegations and, if satisfied as to their truth and substance, allow the appeal. The provisions of section 143 (*a*) of the Criminal Procedure Law, Cap. 14, confers on the Supreme Court a most useful power in making such an enquiry.

Huddleston v. *Furness Railway Co.* (1899) 15 T.L.R. 238; and *Sava* v. *The Police* (1949) 18 C.L.R. 192, referred to.

Cases referred to:

(1) *Sava* v. *The Police* (1949) 18 C.L.R. 192.

(2) *R.* v. *Manchester JJ. Ex parte Lever* (1937) 2 K.B. 96.

(3) *In re Harrison's Share etc.* (1954) 3 W.L.R. 156.

(4) *Coghlan* v. *Cumberland* (1898) 1 Ch. 704.

(5) *Huddleston and another* v. *Furness Railway Co.* (1899) 15 T.L.R. 238, C.A.

(6) *Lowery* v. *Walker* (1911) A.C. 10.

(7) *Higginson* v. *Blackwell Colliery Co.* (1915) 84 L.J.Q.B., 1189.

(8) *Mattouk* v. *Massad* (1943) A.C. 588; (1943) 2 All E.R. 517.

1957
Feb. 1, 9

REGINA
v.
ELLISON
(Special Justice)
Ex parte
TIMES PUBLICATIONS LTD.

Motions for Mandamus and Prohibition.

The applicants, Times Publications Ltd. and Charles Foley, were convicted under Regulation 43 of the Emergency Powers (Public Safety and Order) Regulations, 1955, by the respondent R.S.C. Ellison, sitting as a Justice of the Special Court, of publishing a report likely to be prejudicial to the maintenance of public order. The applicant Company was fined £1 and the second applicant £50. They now moved for—(*a*) an Order of Mandamus commanding the respondent to sign the recorded transcript of his judgment in the aforesaid criminal case (No. 2780/56) which was duly recorded by the Court stenographer, without deletion, addition or amendment thereof, save only as regards clerical errors; and (*b*) an Order of Prohibition prohibiting the respondent from adding to, deleting or amending the aforesaid recorded transcript of his judgment in the above-mentioned case, save only as regards clerical errors.

Peter Benenson and *Glafcos Clerides* for the applicants.

H. J. P. Milmo and *M. Houry* for the respondent.

The facts are fully set out in the judgment which was delivered by:

HALLINAN, C.J.: The applicants apply for two prerogative orders: An order of Mandamus commanding Mr. Ellison, a Justice of the Special Court, to sign the transcript of a shorthand note of an oral judgment delivered in the case of the Q. v. Times Publications Ltd. and C. Foley (who are the applicants) without any deletion, addition or amendment beyond the correction of clerical errors; and, secondly, an order of Prohibition, prohibiting the Justice from adding to, deleting or correcting the transcript save as to clerical errors.

The facts are contained in the affidavit of Mr. Glafcos Clerides, an advocate for the applicants, and of Mr. Ellison, the respondent, and the documents exhibited in the respondent's affidavit.

The applicants were convicted under Regulation 43 of the Emergency Powers (Public Safety and Order) Regulations, 1955, by the respondent, sitting as a Justice of the Special Court, of publishing a report likely to be prejudicial to the maintenance of public order, the Company being fined £1 and Mr. Foley £50.

The trial lasted a whole day; the respondent at the conclusion of the addresses adjourned for half an hour and at 4.30 p.m. delivered an oral judgment that was taken down by the shorthand writer. Five days later the typed transcript of the judgment was delivered to the Justice's chambers. The next day, 8th January, at the urgent request of Mr. Benenson, the applicants' other counsel, who wished to return to England that morning and who said he wished to see the judgment in order to prepare the

grounds of appeal, the respondent specially adjourned the Court in order to correct the transcript so that he could sign it. Normally the respondent would have had a fair copy made of the transcript before he signed it, but, to accommodate Mr. Benenson's haste, he signed the transcript as amended and allowed Mr. Benenson to take it away to read carefully. At this juncture Mr. Benenson thought fit to have a photostat copy made of the transcript. What followed is contained in paragraphs 10 and 11 of the respondent's affidavit :—

> " 10. Mr. Benenson did in fact take the judgment in the form in which I had signed and dated it. At about 1 p.m. he phoned and asked if he could see me after lunch. He and Mr. Glafcos Clerides came at about 2.45 p.m. of that day to my flat and he returned the judgment. He then said he objected to the form of the judgment, which contained deletions and additions of words by me other than mere corrections of clerical errors, and he said with respect that I was bound to sign the transcript as produced by the stenographer, except for correction of clerical errors.
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> 11. I replied that I understood that a judge had a duty to sign judgment in the form and style that he approved, as to grammar, relevance and length, and that he could properly delete from typescript sentences or phrases that were of no permanent value and which contained no points for determination, decision and reasons for decisions. Mr. Benenson said he joined issue on that matter. I then added that the whole case was concerned with a decision on one fact, and that was whether a newspaper article was likely to be prejudicial to maintenance of public order, and that if he seriously thought that my signed judgment had excluded anything that I said in open Court which had a substantial bearing on that fact, he might draw my attention to it and I would add a note to my judgment. Mr. Benenson said he could not suggest amendments. The meeting ended on that day after a short conversation on other topics."

The transcript as amended is an exhibit to respondent's affidavit. This transcript contains about 4000 words; the respondent in revising his oral judgment has deleted about a quarter and substituted about 200 words.

For the applicants it is submitted that mandamus lies because by refusing to sign the transcript (clerical errors excepted) he has failed to comply with the provisions of section 110 (1) of the Criminal Procedure Law, Cap. 14; and that prohibition lies because once a judge has pronounced a judgment and it is recorded in shorthand he is "*functus officio*" and can be prohibited from altering what is so recorded.

Section 109 (1) of Cap. 14 begins as follows :—

" The judgment in every trial under this Law shall be pronounced or the substance of such judgment shall be explained in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their advocates, if any."

And section 110 contains these provisions :

" 110. (1) Every such judgment shall be recorded in writing and, in cases where appeal lies, shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the Judge or, where the Court consists of more than one Judge, by the President thereof or by his direction by any other member of the Court at the time of pronouncing it.

(2) When a judgment has been so signed, it shall not be altered or reviewed by the Judge or Court giving such judgment except for correcting a clerical error."

The difficulties that arise in the interpretation and application of section 110 are in large measure due to the fact that the legislative authority has endeavoured to regulate the practice of our Courts relating to the recording and irrevocability of judgments in both trials by summary procedure and on information in the same statutory provision. It might have been preferable had this section provided different procedure according to the mode of trial ; but, since it has not, this Court must try and interpret the section and make it work upon principles which are applicable to both summary trials and trials upon indictment. The Court has already had to consider the difficulties arising under this section in the case of *Sava* v. *The Police*, 18 C.L.R., 192. In that case the judgment of the trial Court simply stated that : " The accused is found guilty on the first count and not guilty on the second count." Upon appeal the Supreme Court held that the conviction was not invalid because the trial Court had failed to give its reasons ; the appeal was then disposed of upon the material before the Supreme Court. However, Jackson, C.J., said in the course of his judgment that Judges' omission to comply with section 110 (1) could be cured by returning the case to the trial Court under section 143 (*a*) of this Law. This paragraph provides that the Supreme Court may call upon the trial Court to furnish any information beyond that which is furnished by the file of proceedings. It must, I think, be implied in the opinion of the learned Chief Justice on this point that the trial Court, not having given its reasons, was not " *functus officio* " until it had done so. In Savas' case this Court had to interpret section 110 (1) so as to accommodate the fact that courts of summary jurisdiction cannot be expected always to give a judgment with reasons. In the present application we

are met with the difficulty that the section does not appear to provide for an oral judgment, which of course cannot be recorded and signed at the time of pronouncing it; yet such judgments must continue to be delivered.

During the course of my tenure of office in Cyprus I have considered it specially important in this territory to prevent delays in the administration of justice. Unreasonable delays have occurred here in the past, and, in my view, justice delayed is little better than justice denied. If the judge of a Court of summary jurisdiction has to give his reasons in all cases where an appeal would lie this may well lead to delay; but it would be a cause of far more serious delay if judgments not only in these cases but in trials upon information were only delivered after they had been first recorded in writing. Where there is no particular reason for a considered judgment and no speci l reason for its being reduced to writing I consider that the Criminal Courts of Cyprus should be encouraged to rather than dissuaded from delivering oral judgments. In my view, therefore, section 110 (1) should be interpreted so as not to delay or deny justice. More precisely in the present case it should be so interpreted that judges be not dissuaded from giving oral judgments and at the same time the facts found and decisions given in the oral judgments should not be materially altered in the record of the judgment so as to prejudice a party to the proceedings.

In seeking to interpret section 110 (1) and properly to understand cases decided in the United Kingdom concerning the delivery, recording and alteration of judgments, one must carefully bear in mind that the English system of judicature and the practice of the Courts in criminal cases differ from that of Cyprus; and that there is not, so far as I am aware, any provision in the Law of England similar to section 110 (1). On the other hand the English practice, especially upon appeals from County Courts in civil proceedings, is useful in showing how the principles of interpretation I have just stated might be applied to section 110 (1).

In trials upon indictment in England whether Courts at Quarter Sessions or at Assizes, there is no " judgment " in the extended sense which reviews evidence, finds facts and gives decisions and reasons on points of law. The facts are summed up by a judge or chairman of the Court to the jury whom he directs on points of law. The jury in returning their verdict do not state the facts which they find on the evidence beyond finding the accused guilty or not guilty. The judgment or sentence of the Court is pronounced orally by the presiding judge.

> " The judgment when pronounced is minuted on the indictment or in the books of the court, and a note thereof is made in the calendar of cases for trial, and

signed by the judge at the conclusion of the sittings of the Court." (Archbold, 33rd Ed., 223).

"A Court always has the power to alter a sentence so long as the court is in session." (ibid 224).

Under section 16 of the Criminal Appeal Act, 1907, shorthand notes are taken of the proceedings at the trial of any person on indictment and upon an appeal are furnished to the registrar for the use of the Courts of criminal appeal. The appeal is not a re-hearing but the Court of criminal appeal can set aside a conviction on the ground that it is unreasonable or cannot be supported having regard to the evidence or because there was a wrong decision on a question of law or that there was a miscarriage of justice.

In Magistrates' Courts at the conclusion of the trial the justices announce their decision and sentence. In Stone's Justices' Manual, 85th Ed., at p. 258, it is stated :

> "At the present day a conviction in a Magistrates' court is considered to be complete in law when it has been announced."
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> (*R.* v. *Manchester JJ. Ex parte Lever* (1937) 2 K.B. 96).

An appeal lies from a Magistrates' court to a court of Quarter Sessions. The record on appeal would appear to be merely a record of the decision appealed against and a notice of appeal with the grounds. After the preliminary points are dealt with the appeal proceeds as if it was a complete re-hearing, the party who began in the Court below beginning again and proving his case "*de novo.*" (21 Halsbury's 2nd Ed., 715, para. 1240).

It will be seen from the foregoing that in trials on indictment the word "*judgment*" in its strict sense means sentence. In civil cases in England the word "judgment" is sometimes used in the sense of the order, the judgment or verdict of the jury, and decree or award ; sometimes it is used in the wider sense and includes the judges' findings of fact, decisions on points of law and reasons therefor, and the order, judgment, decree or award made by the court. Judgments in the High Court in the strict and limited sense of an order or decree can be reviewed by a judge on the application of a party or on his own initiative so long as the order has not been perfected : Annual Practice, 1957, 708, notes to Order 41, rule 1. (*In re Harrison's Share, etc.*, (1954) 3 W.L.R. 156). After a judgment is passed and entered it cannot be corrected without an application under Order 28 rule 11 (known as the "slip rule") for correcting clerical mistakes or errors arising from any accidental slip or omission. Apart from the "slip rule" the High Court has inherent power to rectify such mistakes. Upon an appeal to the Court of appeal the record, *inter alia*, consists of the order, judgment,

decree, or award under appeal and the transcript of the shorthand notes, if any, of the reasons given in the judgment in the Court below. The official transcript of the shorthand note of the judges' reasons is sent by the official shorthand writer direct to the proper officer of the Court of Appeal. (Order 66A, rule 5). It is not, apparently, signed or certified by the judge.

Where appeals are brought on questions of fact the duty of the court of criminal appeal on the one hand and the Court of appeal on the other are somewhat different. For a court of criminal appeal has to consider whether the conviction should be set aside if it is unreasonable or cannot be supported having regard to the evidence; while the court of appeal in a civil matter " has to bear in mind that its duty is to re-hear the case, and the court must consider the material before the judge, with such other materials as it may have decided to admit. The court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it, and not shrinking from overruling it if on full consideration it comes to the conclusion that it is wrong." (Lindley M. R. in *Coghlan* v. *Cumberland* (1898) 1 Ch. at p. 704).

The practice in appeals from the County Court is somewhat different and, for reasons which I shall presently discuss, is, in my view, particularly relevant to the system of judicature and the practice of the Courts in Cyprus. The judgment of the County Court judge as certified to the Court of Appeal is set out in Annual Practice, 1957, p. 1278 in a note to Order 58, rules 11 and 12 under the heading " County Court Appeals." The transcript of any shorthand note either of evidence or a judgment is sent to the judge for approval and his judgment in the form approved and signed by him is before the Court of Appeal. In *Huddleston and another* v. *Furness Railway Company* (1899) 15 Times Law Reports 238, Smith L. J. said :—

> " When a County Court Judge sent a note of his judgment to the Divisional Court, for their use or for the use of this Court if an appeal was brought, it was not open to either party to impeach the judgment so certified by the County Court Judge and to show by affidavit or by production of shorthand notes or otherwise that the judgment differed from that which the learned Judge had certified. That which a County Court Judge certified as his judgment was conclusive upon the point. For these reasons this Court did not think it right to allow the shorthand notes of the County Court Judge's judgment to be read for the purpose of showing that the judgment differed from that certified by the Judge, though the shorthand notes had been admitted in the Divisional Court."

As regards the extent to which the certified judgment of a County Court Judge can differ from the judgment delivered by him in Court there are two decided cases. The first is *Lowery* v. *Walker* (1911) A.C. 10. The issue there was whether the defendant, who had placed a horse that he knew to be dangerous to mankind in a field which the public were in a habit of crossing, was liable in damages to the plaintiff who had been injured by the horse. The County Court Judge first made a note of his decision and wrote : " No doubt the plaintiff was a trespasser." Some days after the judgment but before the notice of appeal was given the Judge added to his note these words : " On the question of trespass I come to no definite conclusion. The defendant only occupied for 15 years. I had evidence of the use of the path for 30 or 40 years. The defendant put up a notice 15 years ago but would not prosecute." In the House of Lords Loreburn L. C. at page 11 says :

> " It is true there has been some question about what he (the County Court Judge) decided, and it appears that some little time after he had delivered the judgment he made an alteration in regard to a phrase he had used. I think it was quite legitimate to do so, because the word he used was capable of being misunderstood, or understood in one sense rather than in another, and I see no objection to his explaining to the Court and to the parties the sense in which he used the word."

And later at page 12 in his judgment Lord Loreburn goes on :—

> " I think in substance it amounts to this : that the plaintiff was not proved to be in this field of right ; that he was there as one of the public who habitually used the field to the knowledge of the defendant ; "

Lord Shaw of Dunfermline at page 14 says :—

> " My Lords, I should think it strange if a learned county court judge should not be permitted to explain deliberately in writing what he has said in giving judgment, so as to avoid any possible misconception or misconstruction of the language he has employed. I am glad to know from your Lordships that there is no rule of procedure which forbids that by the law of England."

The other case is *Higginson* v. *Blackwell Colliery Co.* (1915) 84 L.J.K.B. 1189. This case, I think, is of importance as indicating what a county court judge should not do when certifying in writing a judgment that he has delivered orally. The facts and actual decisions in this case are not, I think, material but there is a passage in the judgment of Pickford, L.J. which, I think, is important. At page 1200 he says :—

> " I should like to say that it seems to me quite out of the question that a County Court Judge could

find certain facts and announce them as his findings and upon them base a judgment, and then afterwards proceed to give a different finding as to those same facts. I do not think it would be permissible for him to do that. Whether he would be at liberty to change or modify the reasons he had given in law, so long as he arrived at the same result, I do not think it necessary to discuss; but I think it is quite clear that, the County Court Judge having once announced that he found the facts in a certain way, and upon that founded a judgment, it certainly would not be open to him afterwards to give other and different findings upon the facts. In this instance, however, the County Court Judge has not purported to do anything of that sort, so no such question arises here."

I now turn to our own system of judicature and the practice of the Courts in Cyprus. Trials on information are heard at Assizes where the tribunal consists of a member of the Supreme Court and a President and another member of the District Court. At present such cases are also tried by a Judge of the Special Court sitting alone. Summary trials are heard by a Magistrate or a Judge of the District Court and also at present by a Justice of the Special Court sitting alone. In summary trials the conviction or acquittal and the sentence is noted by the judicial officer who has tried the case and (in trials at Assizes) one of the members of the Court signs the warrant containing the formal order or sentence. The presiding Judge of the Assize Court also signs a "formal order" reciting the conviction and making the order as to sentence. Where the nature of the case warrants it the judicial officer or presiding Judge before finding the verdict and pronouncing sentence reviews the evidence indicating what evidence is accepted as true and what is rejected and stating the findings of fact. The judgment also indicates the decision or ruling of the Court on points of law and the reasons therefor. An appeal to the Supreme Court lies from judgments at Assizes upon the same grounds as in cases tried on indictment in England. Appeals also lie upon the same grounds from judgments in summary trials if the appellant is sentenced to any term of imprisonment or to a fine exceeding £10. In appeals on fact the duty of the Supreme Court is the same as that of the Court of Criminal Appeal in England, namely, to decide whether the conviction should be set aside as unreasonable or because it cannot be supported having regard to the evidence.

Section 170 of the Criminal Procedure Law, Cap. 14, provides that notes of the evidence in criminal proceedings shall be made by a judge of the Court provided that the

Court may direct minutes and notes of evidence to be taken down in shorthand and a transcript of such shorthand notes shall be deemed the record of the Court. There is no provision that shorthand notes of the judgment shall be a part of the record. This corresponds with section 73 of the Courts of Justice Law, 1953, which provides that in civil proceedings the Judge should take down a note of evidence but if the Court so directs such evidence may be taken down in shorthand and these notes form part of the record. In civil cases also there is no provision that the shorthand note shall be a record of the judgment. Moreover, Order 63, rule 4 of the Civil Procedure Rules provides that the record of appeal as regards the judgment shall consist of "any judgment read or notes made use of in delivering judgment or making any order."

Having looked at the procedural law of England and Cyprus regarding the delivery of judgments and the recording of them for purposes of appeal, I think it is now possible to state quite briefly the issues which arise on these applications and the way they should be decided. The issues are two: First, whether the transcript of shorthand note of an oral judgment is the record in writing required by section 110; and, secondly, if the transcript is not the record, how far a judge when recording his oral judgment can amend or vary it in form or in substance.

I am unable to accept the submission of the applicants' counsel that the record of an oral judgment is the shorthand note. There is no provision in our Law that this should be so. On the contrary the inference from the statutory provisions that I have cited would indicate that the shorthand note is not, for the purposes of record, the judgment of the Court. In the absence of express statutory provision, I should be most reluctant to accept the shorthand note of a judgment as the record. Before reaching such a conclusion one must consider not merely the particular judge or shorthand writer in the present proceedings, but generally the standard of English and stenography in Cyprus. As administrative head of the judiciary I know how hard it is to find competent stenographers in Cyprus and it must be remembered that they are taking notes and transcribing in a language which is not their mother tongue. Moreover, it is the practice to deliver oral judgments in English and here again in most cases the judgment is delivered by one whose mother tongue is not English. Section 110 applies to all judicial officers in Cyprus exercising criminal jurisdiction, even the most junior and inexperienced; and in making their meaning clear for the purposes of record upon appeal, they should not be tied to the Procrustean bed of a shorthand note which itself may be inaccurate.

On the first issue, therefore, I hold that the transcript of the stenographer's note of the respondent's oral judgment was not the record in writing required by section 110 (1). The record consists of such written record of the judgment as the judge approves and signs. In most cases it will, no doubt, be convenient for the judge to use a transcript of the shorthand note, if any, as a basis for the record but it is not the record.

Upon the second issue, I am of opinion that the record of an oral judgment need not contain the "identical words" of such oral judgment but should record its substance. In English procedure the nearest analogy I have found is the oral judgments of the County Courts where judgments contain findings of fact, decisions on points of law and the reasons therefor, and finally the order or decree; there too, the shorthand note is not the record, but is such record of the oral judgment as the judge approves and signs. However, the analogy must not be pressed too far, as the judgment in the County Court is in civil proceedings whereas we are here concerned with the Criminal Procedure Law. Basing myself on the principles I have said should regulate the application of section 110 (1) to oral judgments, and on the cases decided on appeal from County Courts which I have already cited, I now state three rules which I think a judge should observe when certifying the record of an oral judgment:

First, the judgment signed by the judge should not materially alter what he said when delivering an oral judgment as regards the facts found by him, his rulings or decisions on points of law and the conviction or acquittal of the prisoner on any counts. It would seem desirable that, until the written judgment containing a statement of the sentence or a formal warrant containing the order as to sentence is signed, the trial Court should have a "*locus poenitentiae*". Under our procedure much more time is devoted to the question of liability and much less to that of sentence which often involves considerations difficult to evaluate. This is not a question which falls for decision here, and is one that might well be the subject of statutory provision.

Secondly, within the limits mentioned in the preceding paragraph, a judge should be free to sign a judgment in the form and style which he approves. For example, it should be open to him to omit any passages of his oral judgment which were not material to what he had to decide, and to state clearly and concisely what may have been badly expressed. In my view he should also be at liberty in his written judgment to alter or add to the reasons for his decisions on points of law given in his oral judgment so long as his findings of fact and the decisions themselves remain unaltered. Of course, once he has

signed his written judgment, he cannot submit any further reasons for the consideration of a Court of Appeal especially (as in the case of *Mattouk* v. *Massad* (1943) 2 All E.R. 517) after certain criticisms of the judgment have been made by the Court of Appeal.

Thirdly, the analogy with the practice upon appeals from an English County Court in civil proceedings should not be carried too far. For example, Smith, L.J., in *Huddleston's case* (15 T.L.R. 238) is reported as saying, "That which a County Court Judge certified as his judgment was conclusive upon the point." In criminal cases our procedure must always guard against a miscarriage of justice. If it is alleged by an appellant that the certified judgment differed from his oral judgment as to findings of fact, as to directions on or decisions of law, or as to the verdict or the sentence so materially as to amount to a miscarriage of justice, then it must be competent for the Supreme Court upon appeal to enquire into the truth of such allegations and, if satisfied as to their truth and substance, allow the appeal. The provisions of section 143 (*a*) of the Criminal Procedure Law, already referred to in connection with Savas' case, confers on the Supreme Court a most useful power in making such an enquiry.

My conclusions that the transcript of the shorthand note is not the record for the purposes of section 110 (1) disposes of both these motions for Mandamus and Prohibition. In the motion for Mandamus, the order sought is that the respondent must sign the transcript of the shorthand note of the judgment correcting only the clerical errors; since I hold that this transcript is not record referred to in section 110 (1) this motion must be refused. The motion for Prohibition seeks to prohibit the respondent from adding to, deleting or amending the transcript save only as to clerical errors; since I hold that a judge after delivering an oral judgment can, within the limits I have indicated, omit passages from, add to, and alter his oral judgment, he can of course also do this when using the transcript in preparing the record of his judgment. This motion also is refused.

The question of whether the applicants have been prejudiced by differences between the oral and the certified judgment has been argued. In law it is a minor issue in the case—being one of the things an applicant must establish before mandamus will issue, it being a discretionary order. But since this case touches the conduct of a judge and certain expressions used by Mr. Benenson in his address seemed to suggest that the learned Justice had altered the substance of his judgment, I shall deal with this aspect of the application. It would be inappropriate in proceedings for a prerogative order to compare in detail the oral judgment with the record signed by the

justice. It is, however, exhibited in his affidavit. The deletions do not obliterate the words deleted, which can clearly be read. I have been merely concerned to go through the transcript as amended and signed by the justice to see whether in substance the transcript of the oral judgment, which the applicants allege faithfully records the oral judgment, differs substantially from the amended transcript signed by the Justice. I have read the passages and words deleted by the respondent and those words which he altered or added to. About half of the judgment concerns a count upon which the applicants were acquitted; the other half relates to the charge of publishing a statement likely to prejudice the maintenance of public order. The learned Justice considered the heading of the newspaper article, the subject of the charge, and how the article purports to give the views of the different communities and classes in Cyprus: "British," "Greek-Cypriot" and "Turkish"; then come the opinions attributed to individuals: an Englishman, a Greek Cypriot and a Scots journalist. The learned Justice comes to the conclusion that, despite a parade of wide survey and reference, the article puts forward every point of view except that of Government and those who support Government. The true facts were not presented in an honest manner; and it was calculated to create bad feeling between the different communities. He, therefore, found the article likely to prejudice public order. This, I think, is the substance of the judgment. I am fortified in this view by reading the newspaper report of the respondent's judgment which appeared in the applicants' newspaper "Times of Cyprus" on the morning after the oral judgment was delivered, and a copy of which is an exhibit to the respondent's affidavit. There, what I have stated as the substance of the judgment, is reproduced. I think the respondent has made an honest and a successful effort to retain the substance of what he said in his oral judgment and by his amendments has added considerably to its concision and clarity.

Finally, I consider it my duty to comment on the acts and statements of the respondent and Mr. Benenson during the events recorded in the affidavits filed in the proceedings and certain remarks of Mr. Benenson during the hearing of the application. It is clear that Mr. Ellison was doing his utmost to facilitate Mr. Benenson who represented that he was in great haste. Mr. Ellison adjourned his Court and came into chambers to prepare the record of his judgment. He permitted Mr. Benenson to read it before a fair-copy had been made and even to take it away with him. He allowed Mr. Benenson to visit him in his own house where Mr. Benenson then demanded that Mr. Ellison sign the transcript save for clerical errors. Finally, Mr. Ellison said that if Mr. Benenson seriously thought that

his signed judgment had excluded anything that he said in open Court which had a substantial bearing on that fact, he (Mr. Benenson) might draw his attention to it and he would add a note to his judgment.

Now let us consider the conduct and statements of Mr. Benenson. He, having obtained the amended transcript through the courtesy of the Justice, promptly had photostatic copies made of it without either obtaining Mr. Ellison's permission or even informing Mr. Ellison that he had done so. To obtain a copy of a Court document by such means is, in my view, not only contrary to the Rules of Court, but a breach of that trust which a member of the Bench has a reason to expect from a member of the Bar. If Mr. Benenson had wished to obtain a copy of the shorthand note to compare with the fair-copy of Mr. Ellison's judgment, no doubt Mr. Ellison would have helped him in that as in all else ; for throughout the proceedings Mr. Ellison has never attempted to keep anything back from Mr. Benenson or anyone else. In the course of the addresses upon the hearing of these applications Mr. Benenson has, several times, referred in sinister tones to Mr. Ellison's statement in his affidavit that he had worked on the transcript on the evening of the 7th January, and that this was doing justice behind closed doors. Mr. Benenson also referred to Mr. Ellison's offer to add a note to his judgment as " bargaining." I strongly disapprove of these unjustified remarks by Mr. Benenson on the learned Justice whose conduct throughout this unpleasant incident has been to give all reasonable help to defence counsel. It was Mr. Ellison's duty as a judge to prepare the record of his judgment and it is obvious to anyone reading the transcript that it needed considerable amendment ; he made no attempt whatever to conceal from defence counsel or anyone else what he was doing. His offer to add a note to his judgment, if satisfied that anything material said in his oral judgment had been omitted from his recorded judgment, far from being anything in the nature of a bargain, was yet further evidence of his desire to be in all things fair to the applicants.

Motions dismissed with costs.

[**Note**: After delivering the above judgment the attention of the Chief Justice was directed to R.E. Megarry's " The Rent Acts " (1955), eighth edition, pp. 31–33, under the caption " The judge's notes." The Chief Justice considers this reference may be of interest in connection with his judgment.]