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PHILIPPOS CHARALAMBOUS
v.
SOTIRIS DEMETRIOU

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

PHILIPPOS CHARALAMBOUS,

Appellant (Defendant),

v.

SOTIRIS DEMETRIOU OF AY. SERGHIOS,

(AN INFANT SUING THROUGH HIS FATHER AND NEXT FRIEND),

Respondent (Plaintiff).

(Civil Appeal No. 4314).

Appeal—Findings of fact of trial courts—Powers of the High Court in its appellate jurisdiction in reviewing conclusions of fact of trial courts resting on their estimation of witnesses—The law as it stood in Cyprus prior to the enactment of the new Courts of Justice Law, 1960, (*Law of the Republic, No.* 14 *of the* 17*th December,* 1960).

The special interest of this case lies in the fact that it closes the cycle of judicial pronouncements in Cyprus under the law as it stood prior to the enactment of the Courts of Justice Law (Law of the Republic No. 14 of the 17th December, 1960), on the powers of a Court of Appeal in reviewing findings of fact of trial courts based on the credibility of witnesses. Another remarkable feature of this appeal is that whereas the judgment of the High Court was delivered on February 10, 1961, the hearing of the appeal had been concluded on December 15, 1960, *viz.* almost on the eve of the enactment of the new Law (*supra*), which by section 25 (3) endowed the High Court in its appellate jurisdiction with powers in the matter wider than those possessed by the former Supreme Court (*Note:* The full text of sub-section (3) of section 25 is set out in the judgment of ZEKIA, J. *post*). In the result, the High Court, VASSILIADES, J. dissenting, held that this was not a proper case under the old law for disturbing the conclusions of fact of the trial judge. Counsel for the appellant, strenuously but unsuccessfully, urged the High Court to look into the terms of sub-section (3) (*supra*) which at the time of the hearing (*viz.* on December 15, 1960) was only part of a Bill. It would seem, however, that in the dissenting judgment of VASSILIADES, J. the trends which had brought about the enactment of the new section (s. 25 (3)) tipped the scales in favour of his conclusion that this was a case where the High Court ought to review the findings of fact of

the trial judge, even though such findings were based on his estimation of the witnesses. Be that as it may, it should be noted that the judgments of ZEKIA, J., VASSILIADES, J. and JOSEPHIDES, J. contain a restatement of the powers of Appellate Courts in Cyprus under the old law in disturbing findings of fact of trial courts. Regarding the position under the new Courts of Justice Law, 1960, section 25 (3) the High Court had occasion to deal with the matter in a number of cases which are reported in this volume.

Appeal dismissed.

Cases referred to :

Powell and another v. *Streatham Manor Nursing Home* (1935) A.C. 243;

Yuill v. *Yuill* (1945) P. 15;

Watt v. *Thomas* (1947) A.C. 484;

Mavrovouniotis v. *Chrystalleni Nicolaidou* 14 C.L.R. 272;

Khoo Sit Hoh v. *Lim Thean Tong* (1912) A.C. 323;

Ismet Dervish and others v. *Munir Izzet and others* 16 C.L.R. 98;

S.S. Houtestroom v. *S.S. Sagaporack* (1927) A.C. 47.

Appeal.

Appeal by the defendant against the judgment of the District Court of Famagusta (A.N. Loizou), dated the 8th April, 1960, (Action No. 2210/59) whereby judgment for £25 and £10 costs was given for plaintiff for damages for assault causing serious injuries to the plaintiff.

A. Ch. Gavrielides for the appellant.

J. Kaniklides for the respondent.

Cur. adv. vult.

The following judgments were read :—

O' BRIAIN, P. : This appeal is brought by the defendant against a judgment for £25 damages for assault given in the District Court of Famagusta on the 8th April, 1960. The defence made in the District Court was an alibi. In the District Court the plaintiff and two alleged eye-witnesses of the assault gave evidence and supported the claim. The

defendant gave evidence and called three witnesses to support the defence.

There is no suggestion that the learned trial Judge misdirected himself on any point of law. The decision rests exclusively on questions of fact. The trial Judge says he observed the witnesses and their demeanour in Court. The two witnesses called by the plaintiff did not impress him. He describes them as too biased, not impartial, and added "I do not believe them". This phrase could be understood as meaning that he did not accept their account of the assault (which is substantially the same as the plaintiff's story), or it may mean that he was not prepared to accept that story, if it were not supported by something more than the oaths of these two witnesses. In the whole context of the judgment, it must, I think, be understood in the latter sense.

The trial Judge went on to state that he was not impressed by the evidence of the defendant or of his witnesses. It was upon this evidence that the defence of an alibi was based. The trial Judge made it clear that he was not prepared to act, at all, on that testimony.

If there were no more in this case than that the plaintiff would have failed, because he would not have discharged the onus of proof that was on him. But there remained one other witness, namely the plaintiff himself. It was the bounden duty of the Judge to apply his mind to this evidence, weigh it, determine whether or not he would accept all, or any of it, and ask himself what conclusion should be drawn from it. Reading the record carefully it seems to me that this is precisely what the trial Judge did. He states that, in contradistinction to the other witnesses, he found "the evidence of the plaintiff natural, clear and without exaggeration. His demeanour in the witness box was most satisfactory and natural," and he added that he believed him.

In these circumstances, the trial Judge held that the balance of probability had been tipped in the plantiff's favour for whom he gave judgment. Trying in this case what was purely an issue of empiric fact the learned trial Judge, in my view, acted quite properly. I do not mean that if I myself or some other judge had been trying the case, I am convinced that he, or I, would have necessarily taken the same view of the witnesses as the trial Judge did. It is for the trial Judge to decide on which side preponderates the balance of evidence.

Mr. Gavrielides for the appellant in the course of his argument urged that this Court should have regard to the terms of the Courts of Justice Bill (which was at the time of the hearing of this appeal before the House of Representatives) as clearly indicating that the High Court should exercise a wider power of revision than the former Supreme Court. Whatever the position may now be, having regard to the terms of the Courts of Justice Law, 1960, I am satisfied that this Court was not entitled to have regard to the terms of what was only a Bill at the time of the hearing.

The view which I have already expressed regarding the careful and judicial manner in which the trial judge examined the evidence is, I think, strengthened by the fact that one finds that when dealing with special damages he is very critical of the fact that several items of same which one might have expected to have been vouched were not vouched, and in favour of the appellant he disallowed the plaintiff all special damages and awarded to him, the plaintiff, only general damages.

The trial judge had the advantage of seeing and hearing the witnesses. The appellant has not satisfied me that the learned judge failed to use or has misused this advantage. Indeed, his estimate of the witnesses forms a substantial part of his reasons for his judgment. In such circumstances, I cannot take the view that the reading of the written record of the evidence puts me in a position to conclude that the trial judge was clearly wrong.

For the reasons stated I am of the opinion that this appeal should be dismissed.

ZEKIA, J. : This case brings to the forefront the question as to what extent this Court will consider itself bound by the finding of fact of the trial court based on the uncorroborated evidence of the plaintiff. That a trial judge could in law act on such uncorroborated evidence there is no doubt. According to Medjellé (Article 1655) in a civil action the evidence of two men was required if such evidence was otherwise uncorroborated. This was considered to be a salutary point of evidence at the time the eminent jurists drafted Medjellé. By the Contract Law, 1930, this article together with the chapter dealing with evidence were repealed. The English law and Rules of Evidence were introduced in civil matters also. Save in specified instances the Court can now legally

act on the uncorroborated evidence of a single witness (Evidence Law, Cap. 9, sections 6, 7 & 8).

The Courts of Justice Law, 1960, by section 25 (3) has given wider powers to the High Court in its appellate jurisdiction which powers the former Supreme Court did not possess. Section 25 (3) of the said law reads :—

> "Notwithstanding anything contained in the Criminal Procedure Law or in any other Law or in any Rules of Court and in addition to any powers conferred thereby the High Court on hearing and determining any appeal either in a civil or criminal case, shall not be bound by any determinations on questions of fact made by the trial court and shall have power to review the whole evidence, draw its own inferences, hear or receive further evidence and, where the circumstances of the case so require, re-hear any witnesses already heard by the trial court, and may give any judgment or make any order which the circumstances of the case may justify".

A finding of the trial court based on the credibility of a witness save in exceptional instances according to English authorities which were followed hitherto in this Island cannot be disturbed by an appellate court. The recent authorities dealing with such exceptions are given in the following cases: *Powell and another* v. *Streatham Manor Nursing Home* (1935) A.C. 243, *Yuill* v. *Yuill* (1945) P. 15, and *Watt* v. *Thomas* (1947) A.C. 484.

Having considered the present appeal I feel that I cannot bring it within one of the recognised exceptions. There remains to examine whether this Court should enlarge or engraft a new principle by adding further exceptions to the existing ones.

Assuming that in this particular appeal reference could be made to the increased powers of this Court by virtue of section 25 (3) of the Courts of Justice Law, in the light of the local conditions obtaining in this Island I am inclined to engraft some principle so as to discourage a trial judge from acting on the uncorroborated evidence of a single witness, especially when he is a party to the proceedings, in cases where it appears that the judge is not thoroughly satisfied with such evidence or, although corroborative evidence is available, such evidence is not forthcoming and the failure to adduce such

evidence is not satisfactorily explained by the party in default. On the other hand one has to consider this matter in conjunction with the power of the High Court to rehear a witness who has already been heard by the trial court.

I am not, however, sure whether, without calling a witness before us on whose evidence alone the trial court has acted upon, we shall be justified to apply the principle suggested. This Court sooner or later will have to formulate a principle as to how to exercise their power for rehearing a witness already heard by a trial court consisting of two judges in particular who differ in their findings as to the credibility of a material witness. This point does not however arise in the present case.

While I am far from being satisfied of the way some judgments are given by trial courts where without stating adequate reasons dispose of an issue in the case by merely saying 'I believe or disbelieve so and so'. I will hesitate a lot on the other hand to introduce a principle the application of which might have the effect of amending the Evidence Law which would constitute a transgression on our part of the rights of the legislature.

In the circumstances I agree that the appeal should be dismissed.

VASSILIADES, J. : This is an appeal from the judgment of a District Judge in an action for damages for assault. The appeal is made by the defendant mainly on the ground that the judgment is against the weight of evidence.

The issues arising from the parties' pleadings are : the assault ; and the damages claimed.

The plaintiff, a young village-barber, 15 years of age, claims against the defendant, a farmer, 50 years of age, of the same village, £23 special damages and £100 general damages, for injuries alleged to have been caused to plaintiff's right hand by a blow with a stick inflicted in an affray in the village-cinema.

The defendant-appellant denies the assault. In fact he denies that he approached or saw the respondent-plaintiff at the material time.

Both parties went to the witness-box ; and moreover two further witnesses were called for the respondent-plaintiff, and three for the appellant-defendant.

The case for the respondent is that while he was in the village cinema on a Sunday evening, a quarrel broke out inside the cinema. Many persons were there. On seeing his brother being assaulted, respondent went near, he says, and saw the appellant striking his brother. Will you kill him ? he asked. Whereupon appellant turned his stick and hit the respondent on the hand. This is the assault complained of.

There were several persons there, respondent stated, besides his brother ; and he named three of such persons. Two of them were called as witnesses to support him. Both stated that they saw appellant striking the respondent with a stick.

The case for the appellant, on the other hand, is that while he was at his house that evening, he heard of the quarrel in the cinema. He went to see what was happening. There is evidence (P.W.2) that his son was there. On approaching, appellant says, he saw that the place was closed and the people were standing outside. A nephew of his tried to take his stick from him but appellant did not let him have it. There was no quarrel outside the cinema. Appellant did not see the respondent there at all, he said ; nor did he assault him.

A man working in the cinema who had nothing to do with the quarrel, (D.W.2) stated that he saw appellant coming to the cinema from the direction of his house, after the quarrel. The cinema was then closed and the people were outside. He saw the nephew's unsuccessful attempt to take appellant's stick from him ; but he does not speak about the respondent being there.

Another person selling coca-cola in the cinema, called for the appellant, (D.W.3), stated that he did not see appellant in the cinema. He saw him coming in the road, when the quarrel had finished.

The learned trial Judge in the first part of his judgment, takes his facts from the version of the respondent-plaintiff then he deals with the evidence of the appellant and his witnesses ; and finally says that having had the opportunity of hearing all the witnesses and of watching their demeanour in the box, he does not believe the witnesses of the respondent-plaintiff who had both been prosecuted and convicted of taking part in the quarrel in question, and were, in his (the judge's) opinion "too biased and too occupied with their

participation in the quarrel to be relied upon ;" but he believed the respondent-plaintiff whose "demeanour in the box was most satisfactory and natural" he says. Regarding the appellant and his witnesses, he does not believe them, he says, as they have all given a uniform version and have not impressed him at all.

As regards damages, the learned Judge finds in the last paragraph of his judgment that no evidence was called by the respondent-plaintiff to prove the special damages claimed, although he says "I am sure there was ample and readily available" evidence. And as he did not consider this satisfactory, he treated the claim as one for assault without special damage "in view of the lack of evidence on this point", and gave £25 general damages for pain, suffering and inconvenience to the respondent whose evidene he accepted as most satisfactory, he says.

Counsel for the appellant attacked this judgment mainly on the ground that it is against the weight of evidence. He argued that the trial judge could not accept the evidence of the respondent when he disbelieved his witnesses on the same point ; and he submitted that this Court could disregard, in a proper case, the finding of the trial Court and could enter into the evidence and draw its own conclusions. He cited in support *Mavrovouniotis* v. *Chrystalleni Nicolaidou* (1933) 14 C.L.R. 272 where it was held, inter alia, by the Supreme Court of the Colony of Cyprus, that where a Judge's findings of fact depend upon the credibility of witnesses an appellate Court has power to set such findings aside where the trial judge has failed to take account of circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself, or with indisputable fact.

Counsel for the respondent on the other side submitted that the trial Court in a case of this nature could make the findings on the uncorroborated evidence of a single witness; and that such findings should not be disturbed on appeal as the trial judge who had the advantage of seeing the witnesses in the box, is in a better position to assess the value of each witness's evidence.

The first question which, therefore, has to be decided in this appeal, is whether this Court, as the highest appellate Court in the Republic of Cyprus (art.155 of the Constitu-

tion) has power to enter into the findings of trial courts on questions of fact ; and if such power exists, on what principles should it be exercised. There is no doubt that as a matter of law, this case could be decided on the uncorroborated evidence of a single witness, provided it was such that a Court could properly act upon it.

Art. 155, paragraph 2, of the Constitution provides that subject to paragraphs 3 and 4 of the same article, the High Court shall have such original and revisional jurisdiction as is provided by the Constitution or as may be provided by a law. And this jurisdiction is "to hear and determine," subject to the provisions of the Constitution and of any Rules of Court made thereunder, all appeals from any court other than the Supreme Constitutional Court.

Art. 188 of the Constitution preserved all laws in force on the establishment of the Republic, subject to the provisions of the Constitution, until duly amended varied or repealed. The Rules of Court in force at the time, were likewise preserved, and were in due course kept in force by Rules made under art. 163.

Rule 3 of Order 35, dealing with appeals, provides that all appeals shall be by way of rehearing. And in fact the practice of the Court of Appeal for the last 27 years, at least, was to deal with the findings of the trial courts, to check them upon the evidence, and, in a proper case, to set them aside and make their own findings if they so thought fit in the interests of justice according to law.

The principles upon which the Court of Appeal acted in such cases, were clearly and amply expounded, if I may say so with great respect, by Thomas J. in his judgment in *Mavrovouniotis v. Nicolaidou* (*supra*) -

> "The duty of a Court hearing an appeal from the decision of a Judge without a jury, he said at p. 295 of the report, was clearly defined by Sir Nathaniel Lindley, M.R., in *Coglan v. Cumberland* and by Lord Halsbury in *Montgomerie & Co. v. Wallace James*, and is no longer in doubt. 'The procedure on an appeal from a judge sitting without a jury is not governed by the rules applicable to a motion for a new trial after a verdict of a jury. In such a case it is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment

appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inference from the facts proved or admitted and to decide accordingly' Lord Cave, C., said in *Mersey Docks & Harbour Board v. Procter*".

And further down in his judgment at p. 296, after citing from the decision of the Privy Council in *Khoo Sit Hoh v. Lim Thean Tong*, Thomas J. says :

"The principles to be extracted from these cases appear to me to be : (1) an appellate Court treats the findings of a judge sitting without a jury on questions of fact quite differently from verdict of Jury ; (2) that while great weight should be given to a judge's findings of fact, it is the duty of the appellate Court to weigh conflicting testimony itself, and draw its own conclusions on questions of fact ; and (3) that even when the Judge's findings of fact depend upon the credibility of witnesses, an appellate Court has power to set such findings aside, but will not usually do so unless the trial judge has failed to take account of circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself or with indisputable facts".

Upon these principles Thomas J. reviewed the findings of the trial judge whom in that case, was one of the judges of the Supreme Court sitting as Divisional Court, and reached the conclusion that they should be set aside.

If one looked into the decided cases one would find several of them, both on the civil and the criminal side, where these principles have been acted upon since then, in Cyprus.

Section 25 of the new Courts of Justice Law (No. 14 of 1960) recently enacted under the Constitution of the Republic, expressly provides that this Court in its appellate jurisdiction shall have power to enter into questions of fact and, reviewing the evidence adduced before the trial courts, or receiving further evidence, to draw its own inferences and reach its own conclusions as to facts.

In my judgment, therefore, this Court has the power to enter into the findings of the trial Court on questions of fact; and in exercising this power, it should act on the principles adopted in *Mavrovouniotis v. Nicolaidou* (*supra*) set out above.

I shall now proceed to deal with the position arising in the case under consideration.

The learned trial judge found for the plaintiff-respondent on the issue of the assault, accepting respondent's evidence which he found most satisfactory, he says. Respondent's evidence was that on seeing his brother assaulted inside the cinema he went near and saw appellant hitting his brother. He asked appellant : "will you kill him?" Whereupon appellant raised his stick and hit respondent on the hand. Respondent felt pain and went away. This was in the presence of several persons, three of whom he named. Respondent then went on to describe the injury to his hand caused by the assault, the inconvenience he suffered and the special damage he sustained in the loss of wages.

Respondent's evidence was challenged in cross-examination, on all these points. Respondent admitted that his brother and the persons he called as witnesses were prosecuted and convicted for taking part in that incident in the cinema. And that appellant, having denied the assault when questioned by a police-sergeant, was not prosecuted. Respondent explained that he did not make a statement to the Police in pursuance of his complaint to the Sergeant, as his father said that he had no complaint and he would pay the medical fees.

Respondent's witnesses were obviously called to support him on the issue of the assault. Their evidence was confined, practically to that point. Neither of them, however, speaks of the assault on respondent's brother described by respondent. One of them (P.W.2) says that he was prosecuted for assault. Respondent's brother was also prosecuted and convicted, he adds.

The trial Judge rejected the evidence of both these witnesses. He thought they were too biased and too occupied with their participation in the quarrel to be relied upon and he did not believe them. Apparently he did not believe them on the point of the assault ; but he must have believed them on the point that they were in the cinema at the material time as he found that they were occupied with their participation in the quarrel.

Respondent's brother, who according to the respondent was also assaulted by appellant in the same incident, was not

called. Nor was there called any independent witness of the numerous persons in the cinema to establish appellant's presence inside the hall or where the assault is alleged to have taken place.

While the trial Judge accepted the evidence of the respondent regarding the assault, he apparently found that he could not act on it regarding the special damage. "No evidence has been called by the plaintiff in this matter although I am sure there was ample and readily available one", the learned Judge says in the last part of his judgment. And he adds : "I do not consider this as satisfactory and I propose to treat the claim as one of assault without special damage in view of the lack of evidence on this point"

Now the evidence on this point was that of the respondent ; he stated that he was under treatment for 5 or 6 weeks, was out of work for 6 weeks, and that his wages at that time were £2.500 mils per week. He also said that he paid £2.500 to mils £3.- for travelling in connection with his treatment. The Judge found that he could not accept this part of respondent's evidence and he rejected it.

He also rejected the evidence of the appellant and his witnesses who have all given a uniform version, the Judge says, that has not impressed him at all. But looking at the notes of evidence one can readily see that there is no question of a uniform version.

One witness (D.W.2) who was in charge of the buffet at the cinema and had nothing to do with the quarrel (or the parties herein, as far as the evidence goes) says that after the quarrel the lights were switched off and the cinema was closed. The people were outside. And he saw appellant coming after the quarrel. He made this last statement in cross-examination. He confirms appellant on the attempt of a nephew of his to take his stick on arrival, but gives a different description of it. And he speaks of an attempt on the part of the appellant to reconcile matters, about which there is nothing in appellant's evidence.

Another witness (D.W.3) who was selling coca-cola at the cinema, states that he did not see appellant at the cinema but saw him coming there after the quarrel. This witness does not speak of the nephew trying to take appellant's stick at all.

When the learned Judge says in his judgment that he does not believe these witnesses, what does he really mean ? Does he not believe that they were there? Or that the place was closed after the quarrel ? Or that they did not see the appellant inside the cinema ? Apparently he does not believe their statment that they saw appellant coming there after the quarrel. If he did, his finding on the issue of the assault could hardly stand. And he does not believe them because they have given a uniform version and they have not impressed him.

But as far as the record goes these are independent witnesses who had nothing to do with the quarrel or the parties in this action. While respondent is the plaintiff in the action whose evidence the trial judge did not accept on matters well within his knowledge where he could hardly make mistakes.

Apparently the learned Judge has failed to take account of the fact that the plaintiff sues through his father who is said to have withheld the police proceedings for this aggravated assault, "in a conciliatory mood". And of the fact that none of the persons present at this alleged public assault with a stick, on two youths inside a cinema, is shown to have reacted in any way ; or has been called to testify it.

As far as I am concerned, I find it unnecessary to deal further with the evidence in this case. I take the view that the trial-judge's finding on the issue of the assault is against the weight of evidence, and should be set aside. I would allow the appeal and dismiss the claim as lacking in proofs.

JOSEPHIDES, J. : I agree with the judgment which has been delivered by the President of this Court, and I would take this opportunity of restating the powers of the Court of Appeal in Cyprus, at the time of the hearing of this appeal, in reviewing the findings of fact of a Judge.

In the Cyprus case of *Mavrovouniotis* v. *Nicolaidou* (1933), reported in XIV Cyprus Law Reports, page 272, the Court of Appeal, relying on the decision of the Privy Council in *Khoo Sit Hoh* v. *Lim Thean Tong* (1912) A.C. 323, at p. 325, held that "an appeal from the decision of a judge is in the nature of rehearing and it is the duty of the appellate court to weigh the conflicting evidence and draw its own inferences and conclusions. Where a judge's findings of fact depend

upon the credibility of witnesses an appellate court has power to set such findings aside where the trial judge has failed to take account of circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself, or with indisputable fact".

In 1938 in the case of *Ismet Dervish and others* v. *Munir Izzet and others*, reported in XVI Cyprus Law Reports, page 98, it was held that :

> "A Court of Appeal ought not to take the responsibility of reversing the findings of fact by the trial Court merely on the result of their own comparisons and criticism of the witnesses, and of their own view of the probabilities of the case.
>
> In a case where the trial judge's estimate of the witness forms any substantial part of his reasons for his judgment the trial judge's conclusions of fact should be let alone".

In that case the Cyprus Court of Appeal cited with approval the English case of *Powell* v. *Streatham Manor Nursing Home* (1935) A.C. 243 and the case of *S.S. Hontestroom* v. *S.S. Sagaporack* (1927) A.C. 47.

> In *Powell's* case the House of Lords held that :
> "Where the question at issue is the proper inference to be drawn from facts which are not in doubt, the appellate Court is in as good a position to decide the question as the judge at the trial is.
>
> But the appeal, although a rehearing, is a rehearing on documents and not, as a rule, on oral evidence ; and where the judge at the trial has come to a conclusion upon the question which of the witnesses, whom he has seen and heard, are trustworthy and which are not, he is normally in a better position to judge of this matter than the appellate tribunal can be ; and the appellate tribunal will generally defer to the conclusion which the trial judge has formed".

In the course of his judgment in *Powell's* case Lord Wright said (at page 265) :-

> "Two principles are beyond controversy. First it is clear that in an appeal of this character, that is from the decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, the Court

of Appeal 'must, in order to reverse, not merely entertain doubts whether the decision below is right, but be convinced that it is wrong'. (*The Julia*, *per* Lord Kingsdown, cited with approval by Lord Sumner). And secondly the Court of Appeal has no right to ignore what facts the judge has found on his impression of the credibility of the witnesses and proceed to try the case on paper on its own view of the probabilities as if there had been no oral hearing".

In *Yuill* v. *Yuill* (1945) P. 15 the Court of Appeal held :- "Where a judge has accepted the evidence of a witness or witnesses on one side of a case on a careful observation of his or their demeanour, and has given judgment accordingly, an appellate court can reverse the decision, but only in the rarest cases, and when it is convinced by the plainest considerations that it is justified in holding that the judge has formed a wrong opinion".

And finally in *Watt* v. *Thomas* (1947) A.C.484 the House of Lords held that :-

"When a question of fact has been tried by a judge without a jury and it is not suggested that he has misdirected himself in law, an appellate court in reviewing the record of the evidence should attach the greatest weight to his opinion, because he saw and heard the witnesses, and should not disturb his judgment unless it is plainly unsound. The appellate court is, however, free to reverse his conclusions if the grounds given by him therefor are unsatisfactory by reason of material inconsistencies or inaccuracies or if it appears unmistakably from the evidence that in reaching them he has not taken proper advantage of having seen and heard the witnesses or has failed to appreciate the weight and bearing of circumstances admitted or proved".

In the course of his judgment Lord Thankerton stated the principles as follows (at page 487) :-

"I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having

seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusions ; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence ; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court".

It may well be that in a proper case this Court may have to consider the desirability of extending the above principles to suit the conditions prevailing in Cyprus, having regard to the provisions of the new Courts of Justice Law, 1960 (which was enacted and came into operation after the hearing of this appeal), but I do not think that it would be opportune to do so in the present case.

The findings of the trial judge in this appeal were clearly based on his estimation of the witnesses. Having read and considered the whole record carefully I am not prepared to reject the finding of the trial judge on the facts deposed to by the witnesses, especially when the finding, as in this case, is based on the credibility of the witnesses.

For these reasons I do not consider that I should disturb the finding of the trial judge on what is a question of fact.

I would dismiss the appeal.

Appeal dismissed with costs.