[VASSILIADES, P., TRIANTAFYLLIDES, STAVRINIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

STELIOS P. ORPHANIDES,

Appellant-Plaintiff,

v.

VYRON MICHAELIDES,

Respondent-Defendant,

APPLICATION BY VYRON MICHAELIDES,

Respondent-Defendant-Applicant.

(Application in Civil Appeal No. 4618).

Practice—Appeal—Judgment on appeal—Application for an order that an appeal should be heard further on its merits by the judges of the Supreme Court who have already decided it in the exercise of the Supreme Court's appellate jurisdiction—Once a judgment has been delivered, signed and filed, there can be no possibility for the Court which has delivered it to rehear argument and to change it, or set it aside, except, of course to the extent to which it has, always, been possible to correct an error in a judgment under the provisions of Order 25, rule 6 (known as the "slip" rule and corresponding to Order 20, rule 11, of the English R.S.C.) and under the inherent jurisdiction of the Court—Practice in Cyprus regarding entry of judgments as well as delivery of reserved judgments on appeal radically different from the practice in England—The Civil Procedure Rules Order 34, rule 1, Order 35, rule 25—English R.S.C. Order 41, rule 1.

Judgment—Entry and delivery of—Correction—Possibility of correction—No jurisdiction to that effect with the exception of case falling within the "slip" rule—See under Practice above.

By this application the applicant seeks an order that Civil Appeal No. 4618 between S.O. as appellant-plaintiff, and himself as respondent-defendant, should be heard further on its merits, by the three judges of this Court who have already decided it in the excercise of the Supreme Court's appellate jurisdiction on the 15th December, 1967 (see this judgment in (1967) 1 C.L.R. 309); it is contended, in this respect, that the judgment delivered

on the said date is an erroneous one.

Distinguishing the position in Cyprus regarding entry of judgments and delivery of reserved judgments on appeals, from the position in England, the Court refused the application.

Held, (1). It appears to be now well-established in England that until a judgment or order has been completed and perfected, through being drawn up and entered, the Court which has delivered it has the right, in a proper case, to reconsider it. It is quite clear that the English Courts have taken that view because of the existing practice in England regarding trial of civil cases, where judgment is usually delivered orally, without it being reserved (See: *In re Harisson's Share Under a Settlement* [1955] Ch. 260; and on appeal [1965] Ch. 272, at pp. 275-277, 279, per Jenkins L.J.: *Varty (Inspector of Taxes)* v. *British South Africa Co.* [1964] 2 All E.R. 975, at p. 977, per Lord Denning M.R.).

(2) In England the provision concerning entry of judgments is to be found in Order 41, rule 1 of the R.S.C. (Note: This rule is quoted in the judgment, *post).* In Cyprus the relevant rule is different in that the entry of judgment takes place on the application of a party (see Order 34, rule 1 and Order 35, rule 25 of the Civil Procedure Rules, quoted in the judgment, *post).*

(3) The practice in Cyprus regarding delivery of reserved judgments on appeal is radically different from the practice regarding oral judgments in England. In each case where judgment has been reserved in Cyprus, such judgment is prepared and printed finally, and, as soon as it has been read in open Court, it is signed by the judges who have delivered it, and the original thereof is filed as a matter of record in the official Court file (as it has been done in this case on the 15th December, 1967); and copies are given out at once, there and then, to the parties in the appeal, as again, it has been done in the present case.

(4) We are, therefore, of the view, that looking at the essence of things, and not losing sight of it through procedural technicalities, the position in Cyprus, in relation to a reserved judgment is that such judgment is completed and perfected (just as it happens in England when an orally

pronounced judgment is drawn up and entered) when it is delivered, signed and filed, and whatever there remains to be done by way of formally entering it, *on the application of a party*, is not necessary for its completion or perfection, but it may well be a formality necessary for other purposes.

(5) Consequently, once, in Cyprus, a judgment has been delivered, signed and filed, there can be no possibility for the Court which has delivered it to rehear argument and to change it, or set it aside, except, of course, to the extent to which it has always been possible to correct an error in a judgment under the provisions of Order 25, rule 6 (which is known as the "slip" rule and corresponds to Order 20, rule 11 of the English R.S.C.), and under the inherent jurisdiction of the Court. No question of correcting such an error arises in the present case. The application has, therefore, to be dismissed. In view, however, of the novelty of the point involved, there will be no order as to costs.

Application dismissed.
No order as to costs.

Cases referred to:

Re St. Nazaire Co. [1879] 12 Ch. D. 88;

Re Suffield and Watts Ex p. Brown [1888] 20 Q.B.D. 693;

Varty (Inspector of Taxes) v. *British South Africa Co.* [1964] 2 All E.R. 975, at p. 977 per Lord Denning M.R.;

In re Harrison's Share Under A Settlement [1955] Ch. 260; and on appeal [1955] Ch. 272, at pp. 275-277, 279, per Jenkins L.J.;

Ex parte Hookey, In re Risca Coal and Iron Co. (1862) 4 De G.F. & J. 456.

Application.

Application for an order that an appeal should be heard further on its merits by the Judges of the Supreme Court who have already decided it in the exercise of the Supreme Court's appellate jurisdiction.

Sir P. Cacoyannis, for the applicant.

St. G. McBride, for the respondent.

Cur. adv. vult.

VASSILIADES, P.: The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: By this application, filed on the 19th December, 1967, the applicant, Vyron Michaelides of Limassol, seeks, in effect, an order that Civil Appeal No. 4618, between Stelios Orphanides of Potamos-tis-Yermasoyias, as appellant-plaintiff, and the applicant, as respondent-defendant, should be heard further on its merits, by the three Judges of this Court who have already decided it in the exercise of the Supreme Court's appellate jurisdiction on the 15th December, 1967;* it is contended, in this respect, that the judgment delivered on the said date is an erroneous one.

In view of the novelty of the point raised, a bench of five Judges of this Court,—including the three Judges who determined the appeal—have heard the parties on the preliminary procedural issue of whether or not the said three Judges possess jurisdiction to hear argument about the correctness of their own judgment in this case, which they have already delivered as aforesaid.

The applicant's submission that there does exist jurisdiction to hear further argument, with a view to possibly setting aside or altering the judgment delivered on the 15th December, 1967, has been based on the ground that such judgment had not yet been drawn up and entered on the date when the present application was filed.

It has been argued by counsel for the applicant that until a judgment has been drawn up and entered the Court which has delivered it has jurisdiction, in a proper case, to hear further argument and alter its judgment if need be.

Counsel for the applicant has mainly relied, in this connection, on three English cases: Re *St. Nazaire Co.* [*1879*] 12 Ch. D. 88; Re *Suffield & Watts Ex p. Brown* [1888] 20 Q.B.D. 693; and *Varty* (*Inspector of Taxes*) v. *British South Africa Co.* [1964] 2 All E.R. 975.

The relevant English case law on the point is to be found usefully reviewed in the consolidated cases of *In Re Harrison's Share Under A Settlement* [1955] Ch. 260; and in the same cases on appeal, [1955] Ch. 272.

*Note: Judgment published in (1967) 1 C.L.R. 309.

It appears to be now well-established in England that until a judgment or order has been completed and perfected, through being drawn up and entered, the Court which has delivered it has the right, in a proper case, to reconsider it.

It is quite clear that the English Courts have taken the view that a judgment is not completed and perfected until it has been drawn up and entered, because of the existing practice in England regarding trial of civil cases, where judgment is usually delivered orally, without it being reserved.

In this respect it is interesting to note what Jenkins, L.J., had to say, on appeal, in the *Harrison's* cases (at pp. 275-277).

> "The submissions in support of the appeals are to the effect: First, that, in general, an order is made once and for all at the time when it is orally pronounced, and cannot thereafter be discharged or varied otherwise than on appeal. Secondly, that by way of exception to this general rule a judge may have a limited discretionary power of varying or discharging an order orally pronounced by him at any time before it is perfected by entry, but any such power is confined to cases of manifest error or omission or, in other words, cases broadly speaking comparable to those in which an order can be corrected after entry under R.S.C., Ord. 28, r.11. Thirdly, that in any case a judge should not vary or discharge an order between oral pronouncement and entry, on his own initiative, as distinct from doing so on the application of one or other of the parties .....
> we reject the limitations sought to be placed by the first three submissions on the power of a judge to recall his own order at any time before it has been perfected by entry. So far as the limitations involved in the first and second submissions are concerned, these seem to us to be plainly inconsistent with practice and the weight of authority, but it has been argued that if the practice is wrong it is not too late for the court to say so, and that the authorities are founded on obiter dicta which are later in date than an authority which ought to be followed and which was not brought to the notice of the court in the later cases.....These three submissions would, we think, if accepted, produce an unworkable result. Few judgments are reserved, and it would be unfortunate if once the words of a judgment

were pronounced there were no locus poenitentiae. The appellants make a nominal concession to meet this difficulty by saying that the judge retains seisin of the matter so long as the parties are before him but that once the parties have left the court and the next case has been called, it is too late because the parties may have already acted on his oral judgment. Our answer to this is that although the judgment dates from the day of its pronouncement it is not perfected until drawn up, passed and entered, and anyone who acts on it beforehand must take such risk as there is.....

"We think that an order pronounced by the judge can always be withdrawn, or altered, or modified by him until it is drawn up, passed and entered. In the meantime it is provisionally effective, and can be treated as a subsisting order in cases where the justice of the case requires it, and the right of withdrawal would not be thereby prevented or prejudiced. For example, the granting of an injunction, though open to review, would generally operate immediately, that is, as soon as the relevant words are spoken. But an order which could only be treated as operative at the expense of making it, in effect, irrevocable, for example, an order for the payment of money, cannot be treated as operative until it has been passed and entered. Where the nature of the case requires it, the process of passing and entering can be accelerated by the judge's direction, and this is often done in the Chancery Division".

In relation to the practice before the English Courts it is useful to bear in mind, also, what Lord Westbury L.C. had to say in *Ex p. Hookey*, In *Re Risca Coal & Iron Co.* (1862)4 De G.F. & J. 456 (quoted in the *Harrison's* cases, on appeal, at p. 279) :-

"The principle which makes the order, whenever drawn up and entered, to bear date on the date when it is pronounced by the court, I hold to be one in perfect conformity with the whole theory of judicial procedure. The theory of judicial procedure is that the cogent and binding effect of the order begins immediately from the time when the order is pronounced by the lips of the judge, and if that could be done physically which legally is supposed to be done, and which one would desire to be done if it were possible, every order would be com-

pleted on the spot, written out by the judicial officer and in curia before the court rises, and delivered to the parties That is the unquestionable theory of judicial procedure, and in conformity with that theory that is the time when the order is 'made' for the two words must be considered as equivalent and capable of being substituted the one for the other The mere defining of the words of the court by writing and reducing them into a form in which they can be evidence is a ministerial operation which, according to the true theory, succeeds the delivery of the order by the judge, and must be in point of fact nothing in the world more than the physical embodiment on the spot by the court of the words which the judge has used"

Jenkins, L J., in commenting on the *Risca* case, had this to say about the above observations of Westbury L C (at p 279 of the report of the *Harrison*'s cases) -

"It must be remembered, however, that the only decision in the case was that for the purpose of computing the time allowed for appealing an order was 'made' at the time when it was pronounced, and although the Lord Chancellor based this conclusion on the principle that an order took effect from the date of its pronouncement, and was at pains to point out that in an ideal system every order would be completed on the spot it does not seem to us to involve the proposition contended for, that after the words have passed his lips, and before the order is perfected a judge who has in his belief delivered an erroneous judgment, has no power to recall it"

Both the cases of *St Nazaire* and *Suffield & Watts* were referred to, and relied upon, in the *Harrison*'s cases

The case of *Varty* (*supra*) was a later one, its circumstances were sui generis, as it appears from the following opening passage of the judgment of Lord Denning M R (at p 977) -

"On Tuesday, Apr 28, we first heard argument in this case We then gave reasons for dismissing the appeal But, on thinking over the case afterwards we thought that there were points on which we would like to hear further argument We directed, therefore, that the order of dismissal should not be drawn up and the case should

be set down for further argument. We told counsel of the points we had in mind and on May 28 we had the benefit of their submissions on them. In these circumstances our previous judgments should be regarded as interlocutory observations only; and we will now give our final judgments".

It will be noted that here again the judgment had not been "perfected" in the sense envisaged for the purpose in England.

In England the provision concerning entry of judgments is to be found in Order 41, rule 1, of the Rules of the Supreme Court, and it reads as follows:-

> "Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the cause: Provided that no copy need be delivered of any document a copy of which has been delivered on entering any previous judgment in such cause. The forms in Appendix F shall be used, with such variations as circumstances may require".

In Cyprus the relevant rule is different in that the entry of judgment takes place on the application of a party. Order 34, rule 1 of the Civil Procedure Rules reads as follows:-

> "Save where the Court shall have directed that a judgment be not drawn up until a certain date or until a certain event has happened, every judgment shall, on the application of any party to the Registrar, be entered in a book to be kept for the purpose".

Regarding judgments of the Supreme Court, Order 35, rule 25, provides as follows:-

> "The judgments and orders of the Supreme Court in appeals shall be entered in the same manner as those of the District Court".

The practice in Cyprus regarding delivery of reserved judgments on appeal is radically different from the practice regarding oral judgments in England. In each case where judgment has been reserved in Cyprus, such judgment is prepared and printed finally, and, as soon as it has been read in open Court, it is signed by the Judges who have delivered it, and the original thereof is filed as a matter of

record in the official Court file (as it has been done in this case on the 15th December, 1967); and copies are given out at once, there and then, to the parties in the appeal, as, again, it has been done in the present case.

We are of the view, therefore, that looking at the essence of things, and not losing sight of it through procedural technicalities, the position in Cyprus, in relation to a reserved judgment is that such judgment is completed and perfected (just as it happens in England when an orally pronounced judgment is drawn up and entered) when it is delivered, signed and filed, and whatever there remains to be done by way of formally entering it, *on the application of a party*, is not necessary for its completion or perfection, but it may well be a formality necessary for other purposes.

Therefore, once, in Cyprus, a judgment has been delivered, signed and filed, there can be no possibility for the Court which has delivered it to rehear argument and to change it, or set it aside, except, of course, to the extent to which it has, always, been possible to correct an error in a judgment under the provisions of Order 25, rule 6 (which is known as the "slip" rule and corresponds to Order 20 rule 11 of the Rules of the Supreme Court in England), and under the inherent jurisdiction of the Court.

No question of correcting such an error arises in the present case.

In the result, and for the foregoing reasons, this application has to be dismissed.

In view, however, of the novelty of the point involved, we do not propose to make any order as to costs.

Application dismissed.
No order as to costs.