

JIMMY THOMAS,

*Appellant-Defendant,*

v.

VASILIOS GAVRIELIDES,

*Respondent-Plaintiff.*

JIMMY THOMAS  
v.  
VASILIOS  
GAVRIELIDES

(Application in Civil Appeal No. 4779).

*Civil Procedure—Appeal—Cross-appeal—Appeal dismissed for want of prosecution—Application to reinstate appeal refused—Respondent entitled to elect whether to continue or withdraw his cross-appeal as he is at no procedural fault—If respondent elects to continue his cross-appeal, then appellant (as a respondent in the cross-appeal) may give notice as provided in the rules, of his intention to bring forward the subject matter of his original appeal, at the hearing of the respondent's appeal—The Civil Procedure Rules, Order 35, rules 6, 21 and 22.*

*Appeal—Cross-appeal—Appeal dismissed for want of prosecution—Application for reinstatement refused—Resulting position regarding the cross-appeal—See above.*

*Cross-appeal—See above.*

*Practice—Appeal—Cross-appeal—See above.*

Cases referred to:

*Stylianou v. Nicola and Another* (reported in this Part at p. 369 ante);

*Beeswing* [1885] 10 P. D.18;

### **Application.**

Application for reinstatement of an appeal which was dismissed for want of prosecution under the provisions of Order 35 rule 22 of the Civil Procedure Rules.

*E. Vrahimi (Mrs.)*, for the appellant.

*Chr. Chrysanthou*, for the respondent.

1969

June 6

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JIMMY THOMAS

v.

VASILIOS

GAVRIELIDES

The following judgment was delivered by:

VASSILIADES, P.: This application for reinstatement of the appeal presents some difference from a similar application in the case just heard (Civil Appeal No. 4774).<sup>\*</sup> This difference lies in the fact that here the respondent has filed a cross-appeal. The failure on the part of the appellant to pursue his appeal should not affect the position of the respondent in the latter's cross-appeal where the respondent is at no procedural fault. We have derived assistance in dealing with this matter from a somewhat similar situation dealt with in the Court of Appeal in England in 1884, reported in the Law Reports of the Probate Division (Vol. 10) for the year 1885; the case is reported under the name of *Beeswing* at p. 18 of the report. Adopting the reasoning and course followed in that case, we decide the matter before us as follows:—

The application of the appellant for reinstatement of the appeal under rule 22 of Order 35, fails and is refused. The respondent will now have three weeks from today (in view of the fact that he resides abroad) to decide whether he will apply for hearing of the cross-appeal. He must, however, bear in mind that in such a case, the appellant (as a respondent in the cross-appeal) may give notice as provided in the rules, of intention to bring forward the subject matter of his original appeal, at the hearing of the respondent's appeal. No costs in the proceedings for reinstatement taken by the appellant.

*Application for reinstatement refused; directions with regard to cross-appeal and costs as above.*

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<sup>\*</sup> Reported in this Part at p. 369 *ante*.