IN THE MATTER OF AN APPLICATION BY SAVVAS ATHANASSIOU FOR AN ORDER OF PROHIBITION

and

IN THE MATTER OF AN APPLICATION IN ACTION No. 3917/65 IN THE DISTRICT COURT OF NICOSIA, BETWEEN SAVVAS ATHANASSIOU, PLAINTIFF, AND THE ATTORNEY-GENERAL OF THE REPUBLIC, DEFENDANT.

(*Application No.* 6/69).

Prohibition—Application for leave to apply—Leave granted.

Prohibition—Application for an order of prohibition directed to the District Court of Nicosia prohibiting it from further proceeding in the matter of an application filed in that Court by the respondent Attorney-General to set aside a judgment of the Supreme Court on appeal or, under Order 33, *rule* 5, *of the Civil Procedure Rules, an earlier judgment of the said District Court given in default of appearance under order* 33, *rule* 3—*And which judgment of the said District Court had already been set aside by the aforesaid judgment of the Supreme Court—Application for an order of prohibition granted—The District Court being an inferior Court has no jurisdiction or power to alter the effect of, let alone to set aside, a judgment of the Supreme Court or a judgment of its own which has already been set aside by the Supreme Court on appeal—And which Supreme Court at the same time gave judgment in favour of the plaintiff-appellant (present applicant) for the sum of* £943 *damages.*

Jurisdiction—Supreme Court—District Court—Judgment of the Supreme Court on appeal setting aside judgment of the District Court dismissing plaintiff's claim—Final and conclusive—District Court being an inferior Court has no power or jurisdiction to alter, weaken or set aside such judgment of the Supreme Court—The Courts of Justice Law, 1960 (*Law of the Republic No.* 14 *of* 1960), *section* 25; *The Administration of Justice (Miscellaneous Provisions) Law,* 1964; *Constitution of the Republic of Cyprus, Articles* 152.1, 155.1 *and* 158.

Supreme Court—Powers on appeal—The Courts of Justice Law, 1960 (supra) *section* 25(1) *and* (3)—*The Civil Procedure Rules, Order* 35, *rules* 8 *and* 9.

Appeals—Powers of the Supreme Court on appeal—See hereabove.

Judgments—Judgments of the Supreme Court and District Courts—Effective and binding from the date of their pronouncement—Sections 47 and 2 "Court" of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960)—The Civil Procedure Rules, Order 34, rule 2, Order 35, rule 25.

Practice—Delay in litigation undesirable—It is in the public interest that there should be finality in litigation—Articles 30.2 and 158.2 of the constitution.

Finality in litigation—Undue delay in the administration of justice—See hereabove.

This is an application for an order of prohibition directed to the District Court of Nicosia prohibiting such Court from further proceeding in the matter of an application filed in that Court on March 11, 1969, in Action No. 3917/65 (between Savvas Athanassiou, plaintiff—the applicant in these prohibition proceedings—and the Attorney-General, representing the Republic, defendant) on behalf of the Attorney-General as defendant in those proceedings. The ground upon which the order of prohibition is sought is that the District Court of Nicosia would be acting in excess or outside its jurisdiction and that it has no power to grant the order sought. By his aforesaid application the Attorney-General as defendant is applying to the District Court "for an order setting aside the judgment or order given by the Court on the 27th of February, 1969". His application is stated to be based on the Civil Procedure Rules Order 26, rule 14, Order 33, rule 5 and Order 48, rule 2. The judgment or order given on February 27, 1969 (*supra*) is that which was pronounced by the Supreme Court in Civil Appeal No. 4706 between the same parties and reported in this Part at p. 160 *ante*. The date of the judgment of the District Court of Nicosia in the aforesaid action No. 3917/65 is the 12th March, 1968. Counsel appearing on behalf of the Attorney-General at the hearing of the present application stated in his affidavit filed in opposition and in his address to the Court, that the judgment sought to be set aside is the judgment of the District Court dated March 12, 1968, (*supra*) and not the judgment of the Supreme Court given on February 27, 1969 as set out hereabove; and he further stated that in his application to the District Court he was not challenging in any way the said judgment of the Supreme Court.

The facts of the case which are fully set out in the judgment of the Court (*post*) may be summarised shortly as follows:

The present applicant Athanassiou sustained injuries on the 27th July, 1964, while being employed as a casual labourer, by the Public Works Department of the Government of Cyprus, in the construction of a public road. On November 30, 1965, he instituted civil proceedings in the District Court of Nicosia (Action No. 3917/65, *supra*) claiming damages for negligence against the Attorney-General as representing the Republic of Cyprus and who entered an appearance on December 7, 1965. The statement of claim was filed on March 9, 1966 but the defence was not filed until after an application was filed for judgment in default of defence, under Order 26, rule 10, and Order 21, rule 1(1). Eventually the defence was filed as late as on April 6, 1967. On the 1st November 1967, when the action came on for hearing, counsel appearing for the Attorney-General applied for an adjournment because owing to inadvertence the office of the Attorney-General was unaware of the date fixed for the hearing of the action. There being no objection on behalf of the plaintiff the Court adjourned the case for hearing on the 12th December, 1967. On this day, December, 12, 1967, the plaintiff was legally represented but the record states that there was no appearance on behalf of the defendant Attorney-General, and the District Court ordered that the case be proceeded in default of appearance by the defendant, presumably under Order 33, rule 3, of the Civil Procedure Rules. The District Court, after hearing the plaintiff and a medical witness, called by him, reserved judgment. On February 29, 1968 and while the Court was ready to deliver its judgment counsel appearing for the parties applied for 15 days adjournment with a view to arriving at an amicable settlement. Whereupon the Court adjourned the case to March 3, 1968 for delivery of judgment. No settlement having been reached the District Court of Nicosia delivered its reasoned judgment dismissing the plaintiff's claim, holding that he failed to prove either negligence or breach of statutory duty on the part of the defendant. But according to the practice obtaining in our Courts, they proceeded to assess the damages to which the plaintiff would have been entitled had he been successful, as follows £750 general damages, plus £193 special damages i.e. £943 in all.

The plaintiff lodged an appeal on April 23, 1968, against the said judgment of the District Court of Nicosia, under Civil

Appeal No. 4706. The notice of appeal was duly served on the defendant (respondent) and the appeal was heard on February 27, 1969, when both parties were represented by counsel. The Supreme Court, after hearing full argument on both sides, delivered its judgment on the same day which is now reported in this Part at p. 160 *ante*, allowing the appeal and concluding as follows:

> "On the material before us we cannot but find that the only proper decision in this case—in the light of its facts and of its procedural history—was that the appellant had proved his claim, in the sense of rule 3, of Order 33, and that he was, and is, entitled to judgment against the respondent. As the amount of damages is not in issue and they have been already assessed by the trial Court to be £750 general damages—plus £193 special damages we *order that the judgment under appeal be set aside and that there should be judgment in favour of the appellant for £943 damages plus costs here and in the Court below—...*"

On March 11, 1969, the Attorney-General filed in the District Court of Nicosia the application in dispute whereby he is praying the District Court to set aside "the judgment or order given by the Court on the 27th February, 1969". Thereupon the plaintiff (present applicant) after seeking leave of this Court on June 17, 1969, filed the present application for an order of prohibition directed to the District Court of Nicosia prohibiting it from further proceeding in the aforesaid application filed on March 11, 1969 by the Attorney-General (*supra*).

It was submitted on behalf of the Attorney-General that the judgment sought to be set aside by the District Court is the latter's judgment of March 12, 1968 (*supra*) and not that of the Supreme Court of the 27th February, 1969; counsel went on to state that this is borne out "viewing the provisions of the Civil Procedure Rules on which the application is based (viz. Order 26, rule 14, Order 33, rule 5) and the fact that it is the judgment of the District Court that was obtained by default and not the judgment of the Supreme Court". Counsel for the Attorney-General stated that he did not challenge the supremacy of the Supreme Court or of its judgment which was pronounced on February 27, 1969 in the said civil appeal (*supra*). He further argued that the Attorney-General could not apply before to the District Court of Nicosia to have the judgment in default (of March 12, 1968 *supra*) set aside as he

was not then adversely affected by it. In fact he only became adversely affected, counsel went on, as from February 27, 1969, when the judgment of the Supreme Court was pronounced allowing the appeal by the plaintiff in the action (now applicant in the prohibition proceedings). As from that moment, counsel submitted, the said judgment of the District Court of Nicosia of the 12th March, 1968, became effective and affected adversely the respondent Attorney-General who, accordingly should have the right to apply to the District Court to have its judgment set aside. Otherwise the defendant will be denied justice contrary to Article 30.3 of the Constitution.

On the other hand counsel for the applicant argued that the respondent-defendant by his application to the District Court of Nicosia of March 11, 1969, is questioning the supremacy of the highest appellate Court in the Republic and that he is trying to do so in a round-about way. This, he said, goes to the very root of the administration of justice and, if the District Court were allowed to proceed further with the aforesaid application by the Attorney-General, there would be no end to litigation.

Granting the order of prohibition applied for, Josephides J.:

Held, (1). The judgment of the Supreme Court in the appeal, which was pronounced on the 27th February, 1969, is final and conclusive and the District Court, being an inferior Court, has no jurisdiction to deal with the defendant's (respondent's) application of the 11th March, 1969 (*supra*).

(2) As I read the relevant provisions of the constitution and of the Courts of Justice Law, 1960, the judgment pronounced by the Supreme Court in the said civil appeal No. 4706 (*supra*) on the 27th February, 1969, is final and conclusive and the District Court has no power or jurisdiction to alter the effect of such judgment in any way whatsoever, let alone to set it aside.

(3) (a) Even if the District Court were now asked to set aside their own judgment given on the 12th March, 1968, dismissing the plaintiff's claim (*supra*), they cannot do so because that judgment has already been set aside by the Supreme Court in the aforesaid appeal on the 27th February, 1969, which Supreme Court at the same time ordered that "there should be judgment in favour of the appellant (present applicant) for £943 damages" plus costs.

(b) On the other hand, the District Court having no power or jurisdiction to set aside a judgment or order of the Supreme Court, it follows that it cannot set aside the judgment of the Supreme Court, pronounced in the appeal on the 27th February, 1969 which set aside the judgment of the District Court of the 12th March, 1968, and gave judgment in favour of the plaintiff-appellant (present applicant).

(4) With regard to the argument put forward by counsel for the respondent Attorney-General to the effect that the judgment of the District Court became effective against the defendant (present-respondent) only after the aforesaid decision of the Supreme Court of February 27, 1969, suffice it to say that under the provisions of section 47 of the Courts of Justice Law, 1960, the judgment of every Court shall be binding on all parties to the action immediately on the making thereof, notwithstanding any appeal against the same, and notwithstanding that it was made in default of appearance of any party; and such judgment takes effect from the date of its pronouncement (see Order 34, rule 2, of our Civil Procedure Rules). Consequently the judgment of the District Court dated March, 12, 1968, became binding on all parties on the same date, notwithstanding any appeal against same. As regards the judgment of the Supreme Court pronounced on February 27, 1969, it became binding and conclusive as from that date (Cf. sections 47 and 2 "Court" of the Courts of Justice Law, 1960; and Order 35, rule 25, Order 34, rule 2, of the Civil Procedure Rules).

(5) (a) The Attorney-General–defendant in the action and respondent in the appeal (*supra*) was given full opportunity to be heard in support of the judgment of the District Court of Nicosia of March 12, 1968 and, in fact, he was so heard by the Supreme Court. The relevant powers of the Supreme Court on appeal are those expressly provided in section 25(1) and (3) of the Courts of Justice Law, 1960, and Order 35, rules 8 and 9, of the Civil Procedure Rules.

(b) Consequently, as the Supreme Court on the 27th February, 1969, allowed the plaintiff's appeal and set aside the judgment of the District Court of Nicosia of the 12th March, 1968 and gave judgment for £943 in favour of the plaintiff-appellant (present applicant), it may be reasonably inferred that either the defendant Attorney-General (present-respondent) failed to ask the Supreme Court to exercise any of its aforesaid powers in his favour, or if he did so, he failed to persuade

the Supreme Court that having regard to the circumstances of the case, including the defendant's-respondent's dilatoriness before the trial Court, this was a proper case to "make any order which the circumstances of the case may justify, including an order of retrial....." as the Supreme Court may direct (see section 25(3) of the Courts of Justice Law, 1960).

(6) In the result, I hereby order that the District Court of Nicosia be prohibited from hearing, determining or adjudicating on the aforesaid application of the Attorney-General filed on the 11th March, 1969, in that Court (in action No. 3917/65) either in its present, or in any amended, form. The defendant (present respondent) to pay the plaintiff (present applicant) his costs of this application and the application for leave to apply for prohibition.

Order accordingly.

Per curiam: It is indeed in the public interest that there should be finality in litigation, and the present applicant, who instituted proceedings in the Courts on November 30, 1965, is entitled after 3 1/2 years, to have a final judgment one way or the other, without having to go through the same proceedings all over again at this late stage. As Sir Jocelyn Simon P. said in another context, "it is desirable that disputes within society should be brought to an end as soon as reasonably practical and should not be allowed to drag festeringly on for an indefinite period.....

..... As long ago as Magna Carta; King John was made to promise not only that justice should not be denied but also that it should not be delayed; and there have been times in our history when various Courts have come under severe criticism for their procedural dalays". (*Edwards* v. *Edwards* [1968] 1 W.L.R. 149 at page 150). In this connection reference should also be made to our constitutional provisions for the undelayed administration of justice (see Articles 30.2 and 158.2, of the Constitution).

Cases referred to:

Edwards v. *Edwards* [1968] 1 W.L.R. 149, at p. 150 per Sir Joselyn Simon P.

Application.

Application for an Order of Prohibition, directed to the

District Court of Nicosia, prohibiting it from further dealing with an Application in Action No. 3917/65.

Mr. E. Liatsos, for the applicant.

A. Frangos, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:

JOSEPHIDES, J.: This is an application for an order of prohibition directed to the District Court of Nicosia prohibiting such Court from further proceeding in the matter of an application filed in that Court on the 11th March, 1969, in Action No. 3917/65 (between Savvas Athanassiou, plaintiff, and the Attorney-General of the Republic, defendant) on behalf of the Attorney-General of the Republic as defendant in those proceedings. The ground upon which the said relief is sought is that the District Court of Nicosia would be acting in excess or outside its jurisdiction and that it had no power to grant the order sought.

By his aforesaid application the Attorney-General of the Republic as defendant is applying to the District Court "for an order setting aside the judgment or order given by the Court on the 27th February, 1969". His application is stated to be based on the Civil Procedure Rules, Order 26, rule 14, Order 33, rule 5 and Order 48, rule 2. The judgment or order given on the 27th February, 1969, is that which was pronounced by the Supreme Court of Cyprus in Civil Appeal No. 4706* between the same parties. The date of the judgment of the District Court in the said action is dated the 12th March, 1968. Counsel appearing on behalf of the Attorney-General at the hearing of this application stated in his affidavit filed in opposition, and in his address to the Court, that the judgment sought to be set aside is the judgment of the District Court and not the judgment of the Supreme Court, and he further stated that in his application to the District Court he was not challenging in any way the judgment of the Supreme Court.

It is well settled that prohibition issues from this Court to restrain all inferior Courts from acting in excess or outside the jurisdiction with which they are legally vested. The order is granted as a matter of discretion, save, possibly, where application is made by the person aggrieved and the defect of jurisdiction is apparent on the face of the proceedings.

* Reported in this Part at p. 160 *ante*.

For the purpose of determining the question raised in this application it is necessary to go into some detail into the history of the proceedings between the parties.

The present applicant, plaintiff in Action No. 3917/65 in the District Court of Nicosia, sustained injuries on the 27th July, 1964, while being employed as a casual labourer, by the Public Works Department of the Government of the Republic, in the construction of a public road. Those injuries were caused by a stone (from a heap of stones along the road) which was flung at his leg by the wheel of a passing bus. On the 30th November, 1965, he instituted civil proceedings (Action No. 3917/65) claiming damages against the Attorney-General of the Republic as representing the Government of the Republic of Cyprus. Appearance was entered on behalf of the defendant Attorney-General on the 7th December, 1965, and the plaintiff's statement of claim was filed and delivered on the 9th March, 1966. As more than a year elapsed after the filing of the statement of claim and the defendant failed to file his defence the plaintiff on the 24th March, 1967, filed an application in the District Court applying for judgment in default of defence, relying on the provisions of Order 26, rule 10, and Order 21, rule 1(1). This application was fixed for hearing on the 6th April, 1967, when the defendant filed his defence on that very same day and the application for judgment in default was withdrawn.

On the 6th April, 1967, the action was fixed for mention on the 10th June, 1967, when both parties were represented by counsel. The record reads "No settlement. Action fixed on 1.11.67 for hearing". On the 1st November, 1967, when the action came on for hearing at 11 a.m. one of the counsel of the Republic appearing on behalf of the Attorney-General (defendant) applied for an adjournment because, as he stated, the counsel who had appeared for the Attorney-General on the previous occasion "did not record on the file the date for hearing and, therefore, our office was unaware of this fact". There being no objection on behalf of the plaintiff, the Court adjourned the case for hearing on the 12th December, 1967, and made no order as to costs.

On the 12th December, 1967, the plaintiff was legally represented but the record states that there was no appearance on behalf of the defendant, and the Court ordered that the

case be proceeded in default of appearance by the defendant, presumably under the provisions of Order 33, rule 3, of the Civil Procedure Rules. The record reads as follows:

> "Mr. L. Loucaides who appeared on the last adjournment of the 1.11.67 was called repeatedly and was absent but turned up during the hearing of another action and later on during a break he stated that he cannot possibly appear today as he is engaged in a criminal case. He could not make any arrangements to be represented by anybody else but prayed for an adjournment. It was made clear to him that as the case was adjourned once before, this Court could not entertain such an application for the reason given by Mr. Loucaides. It is the view of this Court that arrangements could have been made for another counsel to appear on behalf of the Attorney-General in this case".

The Full District Court, after hearing the plaintiff and a surgeon (Dr. Kollitsis), called by him, reserved judgment. This was, as already stated, on the 12th December, 1967.

On the 29th February, 1968, the record states that Mr. Papaphilippou appeared on behalf of the plaintiff and Mr. Loucaides on behalf of the defendant and continues, "Court is ready to deliver judgment. Both counsel apply for 15 days in order to reach an amicable settlement. *Court*: adjourned to 12.3.68 for delivery of judgment. The adjournment is given in the special circumstances of this case".

Apparently no settlement having been reached, the District Court of Nicosia delivered its reasoned judgment on the 12th March, 1968, dismissing the plaintiff's claim. The Court did find that the plaintiff was at the material time in the employment of the Republic and that he was injured in the course of such employment and in the circumstances already described.

After considering the evidence and the law applicable the trial Court held that "the plaintiff failed to prove either negligence or breach of statutory duties on the part of the defendant and in due course this action will be dismissed". But, according to the practice obtaining in our Court, they proceeded to assess the damages to which the plaintiff would be entitled had he been successful. In fact they assessed such damages as follows: Special damages at £193 and general damages at £750, total £943; but, as already stated, as the

plaintiff failed to prove liability on the part of the defendant the action was dismissed with no order as to costs.

The plaintiff (present applicant) being dissatisfied with the judgment of the District Court lodged an appeal with the Supreme Court on the 23rd April, 1968, under Civil Appeal No. 4706. The notice of appeal was duly served on the defendant (respondent) and the appeal was heard by a Bench of three on the 27th February, 1969, when both parties were represented by counsel. The plaintiff applied for leave to adduce further evidence, under section 25(3) of the Courts of Justice Law, 1960, but such leave was refused.

The Supreme Court, after hearing full argument on both sides, delivered its judgment on the same day which is reported in (1969) 4 J.S.C. 584.* After analysing the case and giving their reasons, the supreme Court concluded as follows:

> "On the material before us we cannot but find that the only proper decision in this case – in the light of its facts and of its procedural history – was that the appellant had proved his claim, in the sense of rule 3, of Order 33, and that he was, and is, entitled to judgment against the respondent.
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> As the amount of damages is not in issue and they have already been assessed by the trial Court to be £750.– general damages, plus £193 special damages, we order that the judgment under appeal be set aside and that there should be judgment in favour of the appellant for £943 damages, plus costs here and in the Court below, except that the respondent should not be burdened with the costs of the appellant for the adjournment of the hearing of the appeal on the 4th February, 1969".

It will be observed that by its aforesaid judgment (dated the 27th February, 1969, in Civil Appeal No. 4706) the Supreme Court ordered that –

(a) the judgment of the District Court in Action No. 3917/65 given on the 12th March, 1968, be set aside, and that

(b) judgment in favour of the appellant plaintiff be entered for £943 damages plus costs in the appeal and in the Court below (except the costs of an adjournment).

* Now reported in this Part at p. 160 *ante*.

On the 11th March, 1969, Senior Counsel of the Republic, acting on behalf of the Attorney-General of the Republic (defendant), filed in the District Court the application in dispute whereby he is praying the District Court to set aside "the judgment or order given by the Court on the 27th February, 1969". Thereupon the plaintiff (present applicant), after seeking the leave of this Court on the 17th June, 1969, filed the present application for an order of prohibition directed to the District Court prohibiting it from further proceeding in the aforesaid application.

Counsel appearing on behalf of the Attorney-General stated in his affidavit in opposition to the present application that the judgment sought to be set aside is the judgment of the District Court (dated the 12th March, 1968) and not the judgment of the Supreme Court (dated the 27th February, 1969). And he went on to state that this is borne out "viewing the provision of the Civil Procedure Rules on which the application is based, and the fact that it is the judgment of the District Court that was obtained by default and not the judgment of the Supreme Court". Furthermore, in paragraph 4 of his affidavit he stated that the judgment of the District Court became effective against the respondent Attorney-General only after the decision of the Supreme Court; before that there was no judgment adversely affecting or against respondent and, consequently, respondent could not take any action in the matter". He repeated these submissions in his address to the Court but he cited no authority in support thereof.

In the course of his address counsel for the Attorney-General of the Republic stated that he did not challenge the supremacy of the Supreme Court or of its judgment, which was pronounced on the 27th February, 1969, in the civil appeal. He further argued that the respondent Attorney-General could not apply before to the District Court to have the judgment in default set aside as he was not adversely affected by it. He only became adversely affected as from the 27th February, 1969, when the judgment of the Supreme Court was pronounced. As from that moment, he submitted, the judgment of the District Court became effective and affected adversely the respondent, who, accordingly should have the right to apply to the District Court to have the judgment set aside. He said that he did not apply to the Supreme Court at the hearing of the appeal to hear or rehear any evidence, and he stated that he thought that he submitted to the Supreme Court to order a

retrial. In any event, he said, at least the amount of damages is the award of the District Court. He further submitted that if not given a chance now the defendant will be denied justice, and he referred to Article 30, paragraph 3, of the Constitution, to submit that they were not given an opportunity of presenting their case. If there was any defect in his application to the District Court dated the 11th March, 1969, respecting the date of the judgment sought to be set aside, that defect, he submitted, had been cured by his affidavit dated the 25th June, 1969, filed in opposition to the present application. In support of that proposition he referred to Halsbury's Laws of England, 3rd Edition, volume 11, page 115, paragraph 214.

Finally, he concluded by saying that if the date of the judgment sought to be set aside by his application to the District Court is amended to read "12th March, 1968" (the date of the judgment of the District Court), and not "27th February, 1969" (the date of the judgment of the Supreme Court), which is in fact the date stated in his application to the District Court, then no prohibition should issue.

Mr. Liatsos, on behalf of the applicant-plaintiff, submitted that the defendant's application of 11th March, 1969, to the District Court, in fact questions the supremacy of the Supreme Court of the Republic; that the judgment of the Supreme Court cannot be questioned or form the basis of any application before the District Court. Applicant's counsel further submitted that the respondent-defendant by his application to the District Court is questioning the supremacy of the highest appellate Court in the Republic and that he is trying to do so in a round-about way. This, he said, goes to the very root of the administration of justice and, if the District Court were allowed to proceed further with the aforesaid application, there would be no end to litigation.

The respondent-defendant was duly served with a notice of appeal and he was represented by a senior counsel of the Republic who argued the appeal fully before the Supreme Court. That decision, applicant's counsel submitted, was a final one and the defendant-respondent had ample opportunity of being heard and of presenting his case both before the District Court and the Supreme Court and he could not now be heard to say that he was not given such an opportunity.

I am in agreement with the submission of applicant's counsel in the present application that the judgment of the Supreme

Court in the appeal, which was pronounced on the 27th February, 1969, is final and conclusive and that the District Court, being an inferior Court, has no jurisdiction to deal with the defendant's (respondent's) application of the 11th March, 1969. My reasons for this conclusion are the following.

The question which falls for determination is whether in the circumstances of this case, as stated above, the District Court of Nicosia has jurisdiction or competence to proceed in the matter of the application filed in that Court on the 11th March, 1969, on behalf of the defendant (present respondent) to set aside "the judgment or order given by the Court on the 27th February, 1969", or even the judgment of the District Court given on the 12th March, 1968. Mr. Frangos on behalf of the defendant-respondent submits that the District Court has such jurisdiction under the provisions of Order 33, rule 5, of the Civil Procedure Rules, because, according to him, the judgment of the District Court became effective against the defendant-respondent only after the decision of the Supreme Court; and that before that date there was no judgment adversely affecting, or against respondent, and that, consequently, respondent could not take any action in the matter.

Now, the District Court of Nicosia is a statutory Court of first instance subordinate or inferior to the Supreme Court of the Republic, such District Court having been established under the provisions of the Courts of Justice Law, 1960, which law was made pursuant to the provisions of Articles 158 and 152.1 of the Constitution. The Supreme Court exercises the judicial power in the Republic and is the highest appellate Court in the land and has jurisdiction to hear and determine all appeals from the District Courts (see Articles 152.1 and 155.1 of the Constitution; the Courts of Justice Law, 1960, section 25; and the Administration of Justice (Miscellaneous Provisions) Law, 1964). All these powers are subject to any rules of Court which may be made by the Supreme Court.

No provision is to be found either in the Courts of Justice Law, 1960, or any other statute conferring on a District Court the power or jurisdiction to make any order or give any judgment latering the effect of, let alone setting aside, a judgment or order of the Supreme Court. Order 33, rule 5, of the Civil Procedure Rules, would be applicable by the District Court "in a proper case" (rule 5) if the Supreme Court had not dealt with the judgment of the District Court in question

on appeal, and if it had not set such judgment aside and entered judgment for the plaintiff. As I read the relevant provisions of the Constitution and of the Courts of Justice Law, 1960, the judgment pronounced by the Supreme Court in Civil Appeal No. 4706 on the 27th February, 1969, is final and conclusive, and the District Court has no power or jurisdiction to alter the effect of such judgment in any way whatsoever.

Even if the District Court were now asked to set aside their own judgment given on the 12th March, 1968, dismissing the plaintiff's claim, they cannot do so because that judgment has already been set aside by the Supreme Court in the aforesaid appeal on the 27th February, 1969, which Supreme Court at the same time ordered that "there should be judgment in favour of the appellant (present applicant) for £943 damages" plus costs.

On the other hand, the District Court has no power or jurisdiction to set aside a judgment or order of the Supreme Court and it, therefore, follows that it cannot set aside the judgment of the Supreme Court, pronounced in the appeal on the 27th February, 1969, which set aside the judgment of the District Court of the 12th March, 1968, and gave judgment in favour of the plaintiff (present applicant).

With regard to the argument put forward by counsel for the respondent to the effect that the judgment of the District Court became effective against the respondent only after the decision of the Supreme Court, suffice it to say that under the provisions of section 47 of the Courts of Justice Law, 1960, the judgment of every Court shall be binding on all parties to the action immediately on the making thereof notwithstanding any appeal against the same, and notwithstanding that it was made in default of appearance of any party; and such judgment takes effect from the date of its pronouncement (see Order 34, rule 2, of our Civil Procedure Rules, which corresponds to the old English Rules of the Supreme Court, Order 41, rule 3). Consequently, the judgment of the District Court dated the 12th March, 1968, became binding on all parties on the 12th March, 1968, notwithstanding any appeal against the same.

With regard to the judgment of the Supreme Court pronounced on the 27th February, 1969, it became binding and conclusive as from the date of its pronouncement (cf. sections 47 and 2 "Court", of the Courts of Justice Law, 1960; and

Order 35, rule 25, and Order 34, rule 2, of the Civil Procedure Rules).

The defendant-respondent as already stated, was served with a notice of appeal and he was given full opportunity to be heard in support of the judgment of the District Court and, in fact, he was so heard by the Supreme Court. The relevant powers of the Supreme Court on appeal are those expressly provided in section 25(1) and (3) of the Courts of Justice Law, 1960, and Order 35, rules 8 and 9 of the Civil Procedure Rules. Under those provisions, the Supreme Court, on hearing and determining any appeal, is not bound by any determinations on questions of fact made by the trial Court and "has 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, including an order of re-trial by the trial Court or any other Court having jurisdiction", as the Supreme Court may direct (section 25(3)). And Order 35, rule 8, *inter alia*, provides that the Supreme Court shall have power "to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require".

Consequently, as the Supreme Court on the 27th February, 1969, allowed the plaintiff's appeal set aside the judgment of the District Court of the 12th March, 1968, and gave judgment in favour of the plaintiff (present applicant), it may be reasonably inferred that either the defendant (present respondent) failed to ask the Supreme Court to exercise any of its aforesaid powers, or if he did so, he failed to persuade the Court that, having regard to the circumstances of the case, including the defendant's-respondent's dilatoriness before the trial Court, this was a proper case to "make any order which the circumstances of the case may justify, including an order of re-trial by the trial Court or any other Court having jurisdiction", as the Supreme Court might direct (section 25(3)).

It is, therefore, now too late in the day, in the circumstances of this case, to apply to the District Court, under Order 33, rule 5, to have any judgment, either of the District Court or the Supreme Court, set aside. The judgment of the Supreme Court in the appeal pronounced on the 27th February, 1969, after a full opportunity had been given to the defendant-

respondent of being heard, is final and conclusive and the District Court has no jurisdiction to deal with any application or other proceeding which may alter or weaken its effect in any way whatsoever. On the contrary, under the provisions of Order 35, rule 26, it is incumbent on the District Court upon the filing of an office copy of the judgment of the Supreme Court in favour of the plaintiff (present applicant) to issue writs of execution, if such necessity were to arise.

As Sir Jocelyn Simon P., said in another context, "It is desirable that disputes within society should be brought to an end as soon as reasonably practical and should not be allowed to drag festeringly on for an indefinite period. That last principle finds expression in a maxim which English Law took over from the Roman Law: it is in the public interest that there should be some end to litigation..... As long ago as Magna Carta, King John was made to promise not only that justice should not be denied but also that it should not be delayed; and there have been times in our history when various Courts have come under severe criticism for their procedural delays". (*Edwards* v. *Edwards* [1968] 1 W.L.R. 149 at page 150). In this connection reference should also be made to our constitutional provisions for the undelayed administration of justice (Articles 30.2 and 158.2).

It is indeed in the public interest that there should be finality in litigation, and the present applicant, who instituted proceedings in the Courts on the 30th November, 1965, is entitled after 3 1/2 years, to have a final judgment one way or the other, without having to go through the same proceedings all over again at this late stage.

In the result, I hold that the District Court of Nicosia has no jurisdiction to proceed in the matter of the defendant's application filed on the 11th March, 1969, in that Court (in Action No. 3917/65), either in its present, or in any amended, form: and I hereby *Order* that the said Court be prohibited from hearing, determining or adjudicating on the aforesaid application. The defendant (present respondent) to pay the plaintiff (present applicant) his costs of this application and the application for leave to apply for prohibition.

Order accordingly.

The ruling granting leave to apply for an order of prohibition was given on the 17th June, 1969, and it reads as follows:

1969
July 10
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SAVVAS ATHANASSIOU
v.
THE ATTORNEY-GENERAL OF THE REPUBLIC

JOSEPHIDES, J.: This is an application for leave to file an application for an Order of Prohibition, directed to the District Court of Nicosia, prohibiting it from further dealing with an Application in Action No. 3917/65 filed on the 11th March, 1969, in that Court, on behalf of the Attorney-General of the Republic as defendant in civil proceedings. By that Application the District Court is prayed to set aside the judgment given by the Supreme Court of the Republic in Civil Appeal No. 4706 on the 27th February, 1969 (now reported in this Part at p. 160 *ante*). The Application is based on the Civil Procedure Rules, Order 26, rule 14, Order 33, rule 5 and Order 48, rule 2 (as stated in the Application).

The question which arises for consideration is whether an inferior Court like the District Court has any power, competence or jurisdiction to set aside the judgment given by the Supreme Court of Cyprus, which is the highest Appellate Court in the Republic under the provisions of Article 155.1, read together with the Administration of Justice (Miscellaneous Provisions) Law, 33 of 1964.

Prima facie there is good ground for an Application for an Order of Prohibition and in these circumstances I grant leave for the filing of such an Application.

The Application to be fixed for hearing on the 25th June, 1969 at 10 a.m., and notice served on the Attorney-General of the Republic. Meantime, all proceedings before the District Court re Application dated the 11th March, 1969, are hereby stayed.

Application granted.