1932.
Oct. 13.

SUTTON
v.
THE KING
(No. 2).

[STRONGE, C.J., SERTSIOS AND FUAD, JJ.]

JOHN GILBERT SUTTON

v.

THE KING (No. 2).

Criminal Law—Evidence—Manslaughter—Immediate Complaint—Criminal Evidence and Procedure Law, 1929, *Section* 7.

At the trial of the appellant before the Assize Court, Limassol, on a charge of manslaughter of A. the trial Court admitted as a complaint under Section 7 of the Criminal Law and Procedure Law, 1929, a statement by A. shortly before his death as evidence of the facts.

On an appeal against conviction to the Supreme Court, held by Stronge, C.J., and Sertsios, J., (Fuad, J., dissenting), that (1) the provisions of Section 7 are not restricted to any particular offence, but apply to any offence; (2) Evidence of successive complaints is admissible if they comply with the tests of admissibility contained in the proviso to Section 7; and (3) that the statement by the deceased A. was admissible under Section 7, and was evidence of the facts contained therein.

Held, on appeal by the Privy Council, affirming the judgments of the majority of the Supreme Court, that

(1) the statement was admissible, and was evidence of the facts therein stated;

(2) the words in Section 7 "the Court on a charge for any offence may receive in evidence the particulars of any complaint or statement on behalf of the complainant or of the prosecution" mean "receive in evidence in support of the charge and as evidence of the facts to which the statement relates";

(3) the provisions of Section 7 are not restricted to particular offences but apply to any offence;

(4) the words in the proviso to Section 7 "after the commission of the offence" must be read as meaning "after the commission of the unlawful act or omision on which the charge is made;

(5) the alternatives in the proviso to Section 7 requiring the complaint or statement to be made "to the first person to whom the complainant spoke after the commission of the offence, or to the persons to whom the Court considers that it was natural that he would complain" are not exclusive, and therefore successive complaints or statements are admissible if they comply with conditions laid down in the proviso.

R. v. *Haji Pieri* (1), and *R.* v. *Manoli* (2) overruled.

The appellant was convicted by the Assize Court (Crean, J., Greene, P.D.C. and Halid, D.J.) at Limassol of unlawfully causing the death of Christos

(1) 12 C.L.R. 87.
(2) 13 C.L.R. 1.

Apostolides. At the trial evidence was tendered under the provisions of Section 7 of the Criminal Evidence and Procedure Law, 1929,* of a complaint made by the deceased to a witness Demos very soon after deceased was struck. Objection was taken that the statement was not admissible on the ground that Section 7 was not intended to apply to cases of murder and manslaughter; and that, as the offence of manslaughter is not complete until death takes place, the complaint in this case was made before and not after the commission of the offence. The Assize Court ruled as follows :—

> If the English cases of *Rex* v. *Bedingfield* (1), and *Rex* v. *Foster* were the only authorities put before us we would not be prepared to hold on them, that the statement made by the deceased to Theodoros Demos, immediately after he was picked up from the ground, was inadmissible. We are of the opinion that Section 7 of the Cyprus Criminal Evidence and Procedure Act, 1929, makes provision for an incident such as this, and under it the statement by the accused to this witness is admissible.
>
> The section says that any complaint or any statement relating to the offence made by the person on whom the offence has been committed may be received in evidence. Provided that such statement or complaint has been made, having regard to the circumstances of the case, immediately after the commission of the offence, and to the first person or persons to whom the person making the complaint spoke after the commission of the offence. We cannot agree with the submission that the commission of the offence of manslaughter cannot take place until the person dies; we hold the view that such an offence consists in the acts that caused the death and not the mere act of dying.

The appellant appealed to the Supreme Court; *Mr. Triantafyllides* appeared for him; and the *Solicitor-General* for the Crown.

JUDGMENT :—

Stronge, C.J.

STRONGE, C.J.: After dealing with the facts the judgment of the Chief Justice proceeds: It was argued by Mr. Triantafyllides before us that in the first place the Assize Court wrongly received this statement in evidence under the provisions of Section 7 of Law 12 of 1929 and, secondly, even if admissible, it was not evidence of the truth of the facts stated in the complaint.

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* See p. 172 where the section is set out *in extenso*.

(1) 14 Cox 341.

Mr. Triantafyllides's argument as to admissibility proceeded on the lines that the section requires the complaint to be made immediately after the commission of the offence and that as the offence of manslaughter is not committed until the death of the person takes place the complaint in this case was made before and not after the commission of the offence.

As to the place of commission of an offence, the authorities turn very largely on old statutes regulating jurisdictions of different countries and the possibility of indicting for an offence which took place out of England or out of territorial waters or on board ship. Modern decisions on the point are consequently lacking. There is the case of *R.* v. *Mattos* (1), in regard to which the note (*h*) at pp. 272–3 of Vol. IX of *Halsbury's Laws of England* states—"if a foreigner strikes someone abroad and the person struck comes to England and dies of the blow, there is no crime which is cognizible in England." There is also the case of *R.* v. *Rogers* (2) containing the following passage in the judgment of Field, J., at p. 34—"A letter is intended to act on the mind of the recipient, its action upon his mind takes place when it is received. It is like the case of the firing of a shot, or the throwing of a spear. If a shot is fired or a spear thrown, from a place outside the boundary of a county into another county with intent to injure a person in that county, the offence is committed in the county within which the blow is given." In our opinion an offence may be held to be committed possibly in the place in which the wrongful act is concluded. It may also and it usually is said to be committed in the place where the wrongful act begins to be done. In our judgment it may be held to be committed in either place. Certainly in indictments for murder the date inserted is always the date of the wrongful act.

Mr. Triantafyllides further contended that as the principal of admitting such complaints was introduced into Cyprus from England (*vide R.* v. *Hassan Mehmet*) (3), and as in England evidence of such complaints is restricted to sexual offences, the provisions of Section 7 should be held to be inapplicable to homicide cases. The language, however, made use of in Section 7 neither contains nor suggests any such limitation or restriction : it is on the contrary very wide in its terms and not only speaks of "any offence" but goes on to say that the complaint or statement is to be admissible in evidence without in any way specifically defining or

(1) (1836) 7 C. & P. 458.
(2) (1877) 3 Q.B.D. 28.
(3) 8 C.L.R. 8.

limiting the purpose for which when admitted it is to be used. There is no suggestion anywhere in the section that such evidence is to be receivable only to prove certain specific matters. It is clear that if in Cyprus the construction to be put on Section 7 is that such evidence is admissible merely for the purpose of showing that the complainant's conduct at the time was consistent with the evidence he gives as a witness at the trial the wide and unqualified words " any offence " in Section 7 would have to be read with the restricted meaning " any offence other than homicide "— a construction unsupported by authority.

Mr. Triantafyllides further argued on this point that as the first person spoken to by the deceased was his wife and not Demos, the complaint to Demos should have been held by the Assize Court to be inadmissible as not coming within the provisions of the proviso to Section 7. In support of this contention Mr. Triantafyllides relied on the following two decisions of the Supreme Court of this Colony—*R.* v. *Haji Pieri* (1) and *R.* v. *Manoli* (2). These decisions have undoubtedly been looked upon as authoritative decisions for the last six years and as such are not to be differed from lightly. It is equally to be observed, however, that they are Assize decisions made during the course of a trial and consequently without much interval for leisured reflection. Furthermore beyond the mere statement that the Court in the first-named case held that the word " or " in the third last line of the proviso was disjunctive, there is nothing whatever to indicate by what mode or process of reasoning the Court arrived at the conclusion in each case that evidence of one complaint excludes evidence of any subsequent complaint or complaints.

The careful consideration of Section 7 shows that its first paragraph makes admissible in evidence the particulars of *any* complaint or statement relating to the offence (*not*, be it noted, the particulars of a single complaint or statement only). Before, however, any complaint is admitted in evidence the Court to which it is tendered must be satisfied that such complaint conforms to certain standards or tests. These tests are to be found in and form the subject matter of the second paragraph or proviso to the section. The first test is a collective one to which every complaint must conform as a condition precedent to its being admitted as evidence it must have been made immediately after the commission of the offence.

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(1) (1926) 12 C.L.R 87.
(2) (1927) 13 C.L.R. 1.

In addition to conforming to this test any complaint to be admissible must further comply with one of two other alternative tests—that is, it must be either—

(*a*) A complaint which was made to the first person or persons to whom the complainant spoke after the offence was committed; or

(*b*) It must have been a complaint made to the person or persons to whom the Court considers it was natural he would complain or make a statement regarding the offence.

In *R.* v. *Haji Pieri* (1) the Court apparently overlooking the fact that the object of the proviso is to enumerate these tests which the Court has to apply to each complaint in determining the question of its admissibility and that the word "or" was, consequently, necessarily employed to indicate an alternative test of admissibility, interpreted this word "or" as if it were used for the purpose of limiting or restricting the evidence to that of a single complaint.

It seems to us that such a construction is contrary to the language of the section and that a series of complaints may be given in evidence provided that each of them conforms to the general or collective test of being made immediately and also to either of the other two alternative tests. For these reasons we find ourselves unable to follow the two cases cited by Mr. Triantafyllides and preferred to hold on the lines of the decision of Hutchinson, C.J., in *R.* v. *Murat Ismail* (2) that evidence of more than one complaint is admissible if the additional complaint or complaints comply with the tests contained in the proviso.

Now it is conceded by the prosecution that the complaint to Demos was not a first complaint. Was it then a complaint to a person to whom it was natural the deceased would complain? What more natural than that an injured man found lying in the street with blood upon his face should give some explanation to the person coming to his assistance and helping him up of how he came by this injury. In our opinion evidence of this complaint was admissible under Section 7 and was evidence of the truth of the facts stated in it.

The Assize Court, then, to recapitulate, had before it as evidence that the accused struck the deceased the evidence of Demos that he heard the noise and saw the deceased lying on the steps in the hall and that accused was with him and of the statement made by the deceased to Demos, the accused's failure to deny the allegation (that) he had beaten the deceased, coupled with the circumstantial

(1) 13 C.L.R. 87.
(2) (1900) 5 C.L.R. 47.

evidence of Cowan as to the accused's condition and the fact that the description given by the accused to Cowan shortly after the occurrence could not with any fitness be regarded as applicable to the occurrence as subsequently related by him in his evidence.

While the aggregate of this evidence on which the Court convicted is not of a very extensive or robust nature, we are unable to say that there was no evidence on which the Court could reasonably come to the conclusion arrived at in its judgment.

We are, consequently, of opinion that this application must be refused.

SERTSIOS, J., concurred with the judgment of the Chief Justice.

FUAD, J., dissented from the opinion of the majority of the Court. After reviewing the evidence, the learned Judge proceeds: In summing up their findings the learned Judges of the trial Court say: "From the evidence of these four witnesses and from the fact that the hall of the hotel with its overturned flower pots and barrel showed signs of *at least some trouble having taken place there* we draw the inference that accused did strike the deceased and that the ultimate result of that striking was the injuries found on the head and face of deceased which were the cause of his death and, therefore, we find the accused guilty on count 1 which is manslaughter." *This may indicate that they could not,* and quite rightly too, come to any definite finding as to what actually took place in the hotel that night. From the condition of the barrel and pots in the hall they came to the conclusion that trouble must have taken place there and they draw the inference that accused struck the deceased. Fuad, J.

In view of the fact that there was no eyewitness to the assault and that the deceased did not say when and at what place he was beaten and that the Court does not say whether the assault took place on the stairs prior to the falling, the possibility of the Court's having inferred that the actual striking took place in the hall below the stairs cannot be excluded. In other words the Court might have found from the evidence produced that the only assault which they could safely say took place did so below the stairs in the hall. If that is the inference accused could not be found guilty of manslaughter.

In the absence of marks on his fists the only conclusion one could come to from the medical evidence is that the fracture which caused death must have been due to the fall downstairs head over heels and any blows which might have been given in the hall after the fall could not have caused the death.

1932.
Oct. 13.

SUTTON
v.
THE KING
(No. 2).

Demos in his evidence before the Court tried to put into the mouth of the deceased when lying in the hall a statement to the effect that he was offering to show the hotel of the girl to the accused. It is clear from the evidence and from the frank admissions of the prosecution that Demos did not mention this statement to the Police. It is an innocent enough statement in itself, but there must be an object and reason why he should have concocted it later and added it to his evidence before the Court. It was disbelieved; but one could reasonably draw from it the inference that he was at a loss to account for any deliberate and intentional attack on the deceased, and having heard the deceased's supposition in the statement he made to him, introduced this explanation to exclude the possibility of accident. The fact that the deceased said "I have no complaint" to the policeman who came to see him very soon after the incident also proves to my mind that what deceased is alleged to have said to Demos and Soteriades just before was not in the nature of a complaint but an expression of his surprise at the treatment he received at the hands of the accused.

I realize that we are not re-trying the case and that findings of fact by a Court of Assize, consisting of experienced and able Judges, should not be disturbed unless for reasons allowed by the Criminal Appeal Act. I have the greatest respect for the findings and that is the reason why I have dealt at some length with them. In my opinion the Court below was asked to guess at the truth. The suspicion they entertain may be of the gravest kind. The point is whether in the circumstances and upon the evidence given applicant was rightly convicted. I am impressed by the obvious possibilities of this case. But I think it is fair to say that to find that accused struck deceased deliberately is not borne out by the facts and is not based on reasonable grounds. I am, therefore, of opinion that the verdict was against the weight of evidence and unreasonable, and that the application should be granted, the appeal allowed and the conviction set aside.

The Court by a majority, Fuad, J., dissenting, dismissed the appeal.

The appellant obtained leave to appeal to the Privy Council, and the appeal was heard on 23rd, 24th and 25th January, 1933, before Lord Atkin, Lord Thankerton, Lord Russell of Killowen, Lord Macmillan and Lord Wright.

The appellant was represented by *Sir William Jowitt, K.C.*, and *Horace Douglas*; The *Attorney-General* (*Sir Thomas Inskip, K.C.*), and *Kenelm Preedy* appeared for the Crown.

The arguments appear sufficiently from the judgments.

The judgment of their Lordships was delivered by Lord Atkin.

LORD ATKIN:

This was an appeal in a criminal case from a judgment of the Supreme Court of Cyprus given on the 15th October, 1932, which dismissed an appeal by the appellant from his conviction and sentence at the Limassol Special Assizes on the 7th October, 1932. Special leave to appeal was granted by His Majesty in Council on the 15th December, 1932. The appellant was charged on an information containing two counts:—

(1) On or about 13th September, 1932, at Limassol, unlawfully causing the death of one Christos Apostolides.

(2) On or about the 13th September, 1932, at Limassol, by a rash or careless act not amounting to culpable negligence, unintentionally causing the death of Apostolides.

The first count was founded on Section 193 of the Cyprus Criminal Code Order in Council, 1928, which provides that "Any person who by an unlawful act or omission causes the death of another person is guilty of the felony called manslaughter." The second count was founded on Section 200 of the same Code. The appellant was tried by a Court consisting of Crean, J. (Acting Chief Justice), Greene, J. (President of the District Court), and Halid, J. (District Judge). The Cyprus procedure does not provide for trial by a jury. He was convicted on the first count and was sentenced to six months' imprisonment. The appeal was heard by Stronge, C.J., Sertsios, J., and Fuad, J., who, by a majority, Fuad, J., dissenting, dismissed the appeal.

The main question in the case was whether the Courts below were right in admitting a statement made by the deceased man shortly before his death as evidence of the facts. This turns upon the construction placed upon Section 7 of the Criminal Evidence and Procedure Law, 1929. Before discussing the admissibility of this piece of evidence it is necessary to state the circumstances in which it came to be tendered. The appellant at the material date in September, 1932, was a commander in the Royal Navy serving in H.M.S. "Resource." On the night of the 12th September the "Resource" was at Limassol, about to leave the next morning. The appellant came ashore that night, dined with some friends at an hotel, and then went with them to a cabaret known as the "Dionesia." About 1 a.m. a Turkish girl, Nazmie Hassan, came to the "Dionesia." She described herself as a cabaret artist. She worked at the cabaret "Pardon Senora" and at the "Dionesia." The former cabaret is under an hotel known

1933.
Feb. 20.
—
SUTTON
v.
THE KING
(No. 2).

as the " Cote d'Azur," managed by the deceased Apostolides. He was an obese, grey-headed man, 61 or 62 years old, who had been a schoolmaster for forty-two years. Nazmie had stayed in his hotel for two months when she first came to Limassol, but she was then staying at another hotel, the " Majestic." When she came to the " Dionesia " on the night in question, the appellant left his friends and joined her at her table where she sat alone. They had some champagne. At about 2 a.m. Nazmie and the appellant left. According to Nazmie, the appellant asked her to go to her hotel with him. She said she would not, but that Apostolides' hotel was a clean hotel and she could take him there to stay. According to the appellant, the girl left him at the " Dionesia " : he walked to the entrance to leave, and was about to get into a cab when the girl gave him to understand that she wanted a lift. She did not want to go to her hotel, the " Majestic," but, as he understood, wanted to drop him at the " Continental," where his friend lived with whom he had dined that night, and then go on. On the way the girl suggested a drink. The cab was stopped, and she took him into what he gathered was an hotel. It is common ground that they both went together into Apostolides' hotel. They went upstairs, where they were met by Apostolides, whose room was on the half-landing between the ground and first floors. He showed them into a bedroom where there were a table, two arm-chairs and two bedsteads without bedding. The case turns upon the events of the next half-hour. The case for the prosecution was as follows :—Nazmie said that the appellant asked Apostolides by signs how much he was to pay for the room, produced a £1 note from his note-case, and handed it to Apostolides, who returned immediately with the change. He had brought sheets and blankets for one bed, and when he came back with the change the appellant had taken off his jacket and was lying on the bed. The appellant wanted her to stay, but she told him she was not in a condition to stay ; she was unwell. She left him lying on the bed, and, finding she had forgotten her handbag, sent Apostolides into the room to retrieve it. She left the hotel and drove to her own hotel in the cab by which they had driven to the " Cote d'Azur," and which she had ordered to wait.

At the hotel there were staying two visitors, Dimo and Soteriades, who live at Nicosia. They had met after dinner at the " Dionesia " cabaret, had then gone to another cabaret and had returned to the hotel, Soteriades at 1.30 a.m., Dimo at 2 a.m. About 15 minutes after getting to bed, Dimo heard a noise as if something was falling downstairs, it was a mixed-up noise : he heard men's voices. He got up, looked down the staircase and saw Apostolides lying

on his back on the last steps of the staircase. His head was on one of the steps and his feet were on the ground. He says he saw a man whom he did not recognize bending over him with his fist under his chin. The Court have not accepted this part of his evidence. He heard Apostolides say to the man " Come, I show you the hotel of the woman." The Court were not satisfied these words were used. It was indeed proved that Apostolides did not speak English. Dimo then saw Soteriades looking out of his room and saw and heard Apostolides' wife shouting from a window. In the hall which had a marble floor the flowerpots and a bicycle were upside down. He and Soteriades went outside and met the appellant coming from the direction of the " Continental " hotel. He asked for a doctor, they asked him where the man was. He led them some yards back (the distance is estimated by witnesses between 80 feet and 80 yards) and they found Apostolides lying on the right of the road near a wall with his face covered with blood. They all three lifted him up. Apostolides said something to Dimo in Greek and asked him to interpret it to the appellant. Dimo did not interpret it. This is the statement which after argument was admitted. " The deceased asked me to ask the accused why he beat him, and why was he to blame if the woman had left. He also said let him go and sleep now as the room has been paid." Dimo then went for a doctor: the appellant and Soteriades leading Apostolides to the hotel. When he returned in about five minutes time the appellant was not there.

Soteriades evidence was that he had gone to sleep and was awakened by a noise and voices. He heard shouts from a distance. He could not describe the noise, but had said (presumably to the magisterial court) that it was like something falling downstairs. He did not see Apostolides or the appellant in the hall, but when he and Dimo went down, the flowerpots, a barrel, and a bicycle were upset. His evidence as to meeting the appellant and returning with him to Apostolides confirm Dimo's. Before Dimo left, Apostolides said something to him in Greek. He asked if he were to be blamed if Nazmie has gone away and why did he beat me. He also said " I am a poor hotel-keeper." He also says that on the way back, Dimo having gone for the doctor, Apostolides said " I am not interested in this matter, I am a poor hotel-keeper why did you strike me? " Apostolides asked him to interpret these words to the appellant, and he did so. The accused said to me " he did not die, but when he dies let me know to come back." When they got back to the hotel he said to the appellant on the instructions of Apostolides " you may go to sleep in your room as you have paid for it." The wife of Apostolides, who was sleeping in a separate room from his,

1933.
Feb. 20.

SUTTON
v.
THE KING
(No. 2).

said that she was awakened by noises as if a man was choking and as if things were falling to the ground, not as if something were falling down the stairs. She looked out of the balcony of her room and in two or three minutes she saw Apostolides and another man come out of the street door. She called out to her husband and he called out "nothing, nothing." At about 3.15 the policeman who was first called to the scene had a conversation with Apostolides who said "I have no complaint." Mr. Cowan, with whom the appellant had dined at the "Continental" hotel and who was one of the party at the "Dionesia," said that when Nazmie came to the cabaret she sat at a table alone and the appellant joined her. When the witness left about 2 a.m., the appellant was not at the table. When the witness returned to his room after a time he saw the appellant as if coming from the small pier. He shouted down to the appellant who came up to his room. He was excited and annoyed, and said he had had a row with that Turkish girl and a man. He noticed nothing wrong with him there were no signs about him of having been in a mix-up. A police witness gave evidence of inspecting the hotel at 8.30 a.m. on September 13, and finding stains of blood on the third step of the staircase going up, three stains of blood on the floor of the hall between the first and second step, and two stains on the marble floor at the foot of the staircase. On the wall of the hall at the foot of the stairs he saw marks as if made by heels. Apostolides died in hospital on September 13, between 7.0 and 8.45 p.m. He had been lying semi-conscious since about 9.30 a.m. At the post-mortem examination it was found that there was an extensive fracture of the skull through the right parietal bone extending from the frontal bone to the centre of the occipital bone. There had been extensive hæmorrhage in the cranial cavity from which the man had died. There was a contusion of the right eyelids, upper and lower, purple in colour: the contusion extended on to the right cheek. There were superficial abrasions on the right ear and on the right forearm; there were recent bruises on the right upper arm, forearm and over the left anterior superior spine of the ileum. The medical opinion was that there had been severe diffused violence on the right side of the head. The injury to the eye could have been caused by a blow of the fist. The fracture of the skull could have been caused by a very severe blow on the head. All the injuries could be accounted for by a fall downstairs head over heels. The appellant's ship left Limassol at 6 a.m. on the 13th. Twenty-four hours later at Alexandria he heard of the death of the deceased. He returned to Limassol and on the 19th, when charged by the police said, on the advice of counsel, that he reserved his defence.

The appellant gave evidence on his own behalf. According to his account, what happened after he and the girl and Apostolides had gone into the upstairs room was as follows: He sat in a chair and suggested beer to the girl: she spoke to the man, and he went away. He then put his hand in his pocket and found he had very little money left, under 2*s*. He told the girl and turned out his trousers pocket. She seemed annoyed and left the room. The manager returned with bedding for one bed. The appellant tried to explain he did not want a bed, but the manager could only talk Greek. He went out of the room, and the appellant waited a few minutes on the chair, as he wanted the girl to get away before he left, thinking the girl was annoyed. He then started downstairs, where he saw Apostolides at the bottom of the top flight, coming up. He met him about the third step from the landing. Apostolides put out his hand and said "Shillings," wanting money for the room upstairs. Appellant said "No": he then passed Apostolides and went on down. Apostolides followed and caught appellant by the left upper arm as he was about to start down the second flight. Appellant jerked his own arm away, and the next thing he knew Apostolides was falling down the stairs. He went down immediately, and found Apostolides lying on his right side at the bottom of the stairs, his head to the right, his legs to the left. He was beginning to raise himself up. Appellant assisted him up: he seemed very dazed. He supported him to the outer hall, and Apostolides staggered about with him. He saw no blood on him, but it was semi-dark. After two or three minutes he appeared to be all right. Appellant went into the street and turned towards the "Continental" hotel. Shortly afterwards he found that Apostolides was coming with him and talking. He had gone some distance when he fell on the street. Appellant turned and rendered assistance. Apostolides had blood on his face. Appellant then went back, and met Dimo and Soteriades, and went back with them; and then, with the assistance of the Maltese boatmen of the ship's boat, took Apostolides back to the hotel. He waited for a little in the room. Apostolides told him, through Soteriades, that he was all right. He told him to buck up, he was not dead yet. He gave Soteriades his name and ship and told him to wire how Apostolides was. He denied that he gave Apostolides a £1 note and got change. Soteriades did not interpret to him what the deceased said on the way back to the hotel. He did not strike the deceased or use any violence to him. He was never excited or annoyed that night. He did tell Cowan he had a row with a Turkish woman and a man; but at no time had he had a row with either, though he had unpleasantness with the girl and an altercation with the man. The assistant

1933.
Feb. 20.

SUTTON
v.
THE KING
(No. 2).

registrar of the District Court produced the inventory of the movable property of the deceased, which included no £1 note, but apparently included no money at all.

Though the above summary does not relate all the details of the evidence on either side, it narrates sufficiently the substance of the case on either side. The defence contends that without the evidence of the statements made by the deceased the Court could only guess at the happenings of the night in question, and that there was no evidence of any unlawful act by the appellant causing the death of the deceased, and no evidence excluding the reasonable possibility of the appellant's story that the death was accidental, due to the deceased falling downstairs when the appellant lawfully jerked his arm away from the deceased's hold. On the other hand, the prosecution, while contending that apart from the statements there was sufficient evidence to justify conviction, assert that if the statements are evidence of the fact, there is ample evidence upon which the Court could find an unlawful assault by the accused upon the deceased and that the assault caused his death. It is necessary, therefore, to examine the section under which the statement was admitted. It is as follows :—

"*Particulars of immediate complaint may be given in evidence on behalf of the prosecution*—

"7. Any Magisterial Court before which any person charged of any offence triable summarily with or without consent is being tried, or any Magisterial Court before which a preliminary inquiry on a charge for any offence not triable summarily brought against any person is being held, or any Court before which any person accused of any offence by information is being tried, may receive in evidence, on behalf of the complainant or of the prosecution, the particulars of any complaint or any statement relating to the offence made by the person on whom the offence has been committed, or the person in charge of any property against which the offence has been committed and who was present when the offence was so committed.

Provided that the particulars of any such complaint or statement shall not be admissible on behalf of the complainant or of the prosecution unless it appears to the Magisterial Court before which a preliminary inquiry is being held or the Court before which the accused person is being tried that the complaint or statement has been made, having regard to the circumstances of the case, immediately after the commission of the offence, and to the first person or persons to whom the person making the complaint or statement spoke after the commission of the offence, or to the person or persons to whom the Court considers that it was natural that he would complain or make a statement regarding the offence."

In order to appreciate the meaning of the section which was obviously intended to amend the law as to evidence in Cyprus, it is necessary to point out that the Courts of Criminal Jurisdiction in Cyprus have always since English control adopted the English law of evidence, subject to Cyprus statutory modifications. The amendment, therefore, must, as the defence contend, be treated as engrafted upon the English system of evidence. So regarded it is said that the section should be read as going no further than an extension of the cases to which the English principle applies of admitting in evidence the fact of a complaint having been made in sexual cases and the like. Whether the fact of the complaint alone is admissible or whether the particulars of the complaint are also admissible, as was decided in *Reg.* v. *Lillyman* (1), neither the complaint nor the particulars are evidence of the facts stated, but are only admitted to show that the subsequent conduct of the complaint was consistent with the charge she or he makes, and also to negative consent on her or his part. Their Lordships do not think that any such limitations can be read into the section of the Cyprus statute. The words " the Court on a charge for any offence may receive in evidence the particulars of any complaint or statement on behalf of the complainant or of the prosecution " must mean " receive in evidence in support of the charge and as evidence of the facts to which the statement relates." The conditions imposed are apparently considered sufficient to establish the evidential value of the statement, and to put it for purposes of evidence on the same footing as dying declarations and declarations of deceased persons when once such declarations have become admissible. The reference to any offence and the express application to statements by persons in charge of property in respect of offences against property appear to extend the effect of the evidence far beyond the principle upon which the English doctrine rests. It appears that the Cyprus Courts have always admitted such statements as evidence of the fact, as is made clear in the cases referred to in the judgment of the Chief Justice; and on this point the judgment of Fuad, J., the dissenting Judge, agrees. It is also to be observed that these decisions were given before this section which was first enacted in 1894, was re-enacted in 1929; and the re-enactment may properly be considered to have been made on the judicial interpretation of the words used. Their Lordships are satisfied that the decisions of the Court below were right on this point, and that the statements, when admitted, were evidence of the facts stated in them.

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(1) (1896) 2 Q.B. 167.

1933.
Feb. 20.

SUTTON
v.
THE KING
(No. 2).

It was, however, contended that even on this assumption the conditions of admissibility set out in the proviso were not complied with. The statement has to be made " having regard to the circumstances of the case immediately after the commission of the offence." The offence of homicide it is said is not completed until the death of the victim: and, therefore, it is contended that the section in spite of that express reference to " any offence " does not apply to charges of murder or manslaughter or unintentionally causing death by a rash or careless act. This appears to their Lordships to be too restricted a construction and to sacrifice the obvious meaning of the words to a narrow verbal interpretation. In all cases of assault, whether followed by death or not, the only thing of which the victim can complain or make a statement is the wrongful act or omission from which he is suffering; the consequence, whether it be grievous bodily harm or death, follows in the course of nature once the act has been perpetrated. It would seem remarkable that the admissibility of a statement should depend upon the fate of the declarant up to 12 months afterwards: or that if the declarant died and the case rested mainly on such a statement, the accused might be convicted for an aggravated assault upon him, though not for murder or manslaughter. In the view of their Lordships the words " any offence " are governing words, and the words " after the commission of the offence " must be read as meaning after the commission of the unlawful act or omission on which the charge is made. A further point was taken that the alternatives in the proviso—the first person to whom the declarant spoke, or the person or persons to whom the Court thinks it was natural he should complain or make a statement—are exclusive: so that the victim, having spoken once after the offence, cannot thereafter make an admissible statement to another though natural person. Here it is said that as Apostolides called out " nothing, nothing," to his wife, the subsequent statements to Dimo and Soteriades, though " natural " persons, are not admissible. Their Lordships think that this construction is wrong: and though it appears to have found favour in Cyprus in one or two Assize decisions the majority of the Supreme Court on Appeal were right in over-ruling them. No reasonable effect is given to the alternatives, unless the view taken by the Supreme Court is correct. Lastly, it was said that on the wording of the section the trial Court and the trial Court alone as *curia designata* can admit the evidence: and that as the trial Court in this case treated the statement to Dimo as being a statement to the first person to whom Apostolides spoke after the offence, ignoring the earlier call to the wife, the Court of Appeal were bound by the error, and could not

treat the evidence as admissible on the true ground of being made to a natural person or persons. It is by no means certain that the trial Court acted on this ground : but even if they did this contention is fanciful : the words of the section do not point to the trial Court alone having power to decide the admissibility of the evidence : and the provisions of the Cyprus Ordinance as to criminal appeals (Cyprus Courts of Justice Order in Council, 1927, Section 56), give to the Appeal Court the powers provided by Sections 3, 4, 5 and 6 of the English Criminal Appeal Act, 1907, under which it would be idle to contend that the powers of the Court of Criminal Appeal are limited as is suggested.

Once it is held that the statements were admissible as evidence of the facts it becomes obvious that the case is not one in which their Lordships in adherence to the ordinary principles which guide them on criminal appeals could advise His Majesty to alter the decision. The question of the credibility of the witnesses and the weight to be attached to their evidence is for the tribunal of fact. There has been no irregularity of any kind : the evidence has been carefully weighed, and considered with discrimination. It might reasonably produce a different effect upon different minds, as is shown by the judgment of Fuad, J., who thought that all reasonable doubt had not been removed. But the trial Court were not bound to accept the evidence of the accused : they had a case where the accused and the deceased were the last two persons in contact, and where in a few minutes the deceased was found suffering from injuries which were consistent with assault, and where the deceased in evidence that was admissible said he had been assaulted by the accused. The defence was a bare denial and there was no suggestion that the assault (if made) was justified. There appears to have been ample evidence upon which the trial Court could find that the accused assaulted the deceased and by the assault caused his death. There is a total absence of any violation of any of the essential principles of justice or of any such miscarriage of justice as evokes the interposition of this Board in criminal appeals. On the contrary the accused appears to have had a fair trial before a competent Court : the conviction was affirmed in a very careful judgment by the Court of Appeal. There was undoubtedly evidence upon which any tribunal could reasonably affirm that the accused was guilty of the offence charged : and there is no ground upon which this Board could advise interference. For these reasons their Lordships at the hearing felt bound to advise His Majesty that this appeal should be dismissed.

Appeal dismissed.