[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, JJ.]

ACHILLEAS CHARALAMBOUS KAOURAS,

Appellant,

v.

THE POLICE,

Respondents.

(*Case Stated No.* 156).

Criminal Procedure—Case stated for the opinion of the Supreme Court—A case cannot be stated with reference to a merely interlocutory decision as distinct from a final decision disposing of a criminal case—The Criminal Procedure Law, Cap. 155, *section* 149(1)—*Cf. sub-section* (7) *of said section* 149.

Case stated—Section 149(1) *of Cap.* 155—*The word "decision" therein—Construction of.*

Words and Phrases—"Decision" in section 149 (1) *of the Criminal Procedure Law, Cap.* 155—*See* supra.

In the course of the trial of a criminal case by the District Court of Nicosia—in which the present Appellant is the accused—the trial Judge amended, under section 83 of the Criminal Procedure Law, Cap. 155, the particulars of the counts on which the Appellant is being tried; at that stage counsel for the Appellant applied under section 149 (1) of the said Law, Cap. 155, that a case be stated for the opinion of the Supreme Court, on the point whether or not the trial Judge had properly made the amendments concerned; complying with the request of counsel, the trial Judge stated the case which is now before the Supreme Court.

The Supreme Court held that on the true construction of section 149 (1) of Cap. 155 a case cannot be stated in respect of an interlocutory decision (such as the decision concerning the amendment referred to above) as distinct from a decision finally disposing of a case.

Section 149(1) of Cap. 155 provides:

" The Attorney-General or any party dissatisfied with the

decision of a Judge exercising summary jurisdiction as being erroneous on a point of law or .... may, within the time set out in sub-section (7) of this section (Note: ten days) apply in writing to the Judge who gave the *decision* to state a case setting forth the facts and grounds of such *decision* for the opinion of the Supreme Court".

Held, (1). Having considered what is the correct interpretation, in the context of section 149 as a whole, of the word "decision" in section 149(1), we reached the view that it means a decision finally disposing of a case, as distinct from a decision which is a merely interlocutory one.

(2) In this respect we might usefully refer to sub-section (7) of section 149 which provides that where the application to state a case is made by the Attorney-General it shall be made within fourteen days from the date of the decision and that in every other case it shall be made within ten days. That being so, had the word "decision" been meant to include also an interlocutory one there would not have been prescribed by sub-section (7) the above mentioned time-limits which are so obviously incompatible with a continuous criminal trial

Order accordingly.

Cases referred to:

Card v. *Salmon* [1953] 1 All E.R. 324, at p. 326;

R. v. *Savva*, 13 C.L.R. 63;

Police v. *Kyriacou*, 14 C.L.R. 247.

Case Stated.

Case stated by Colotas, D.J. (a Judge of the District Court of Nicosia) relative to his decision dated the 29th January, 1973 in Criminal Case No. 11043/71 whereby he directed the amendment of the particulars of the counts on which the Appellant was being tried.

K. Talarides, for the Appellant.

L. Loucaides, Senior Counsel of the Republic with *Cl. Antoniades*, Counsel of the Republic, for the Respondents.

The decision of the Court was delivered by:-

TRIANTAFYLLIDES, P.: In the course of the trial of a criminal case by the District Court of Nicosia—in which the present Appellant is the accused—the trial Judge amended, under section 83 of the Criminal Procedure Law, Cap. 155, the particulars of the counts on which the Appellant is being tried; at that stage counsel for the Appellant applied, under section 149 (1) of Cap. 155, that a Case be stated, for the opinion of this Court, on the point of whether or not the trial Judge had properly made the amendments concerned; the Judge complied with the request of counsel and as a result this Case Stated is now before us.

A matter which we have to decide as a preliminary issue is whether it was possible in law to state a Case under section 149 during the trial:

Section 149 (1) of Cap. 155 reads as follows:-

> " The Attorney-General and any party dissatisfied with the decision of a Judge exercising summary criminal jurisdiction as being erroneous on a point of law or as being in excess of the jurisdiction or of the powers of the Judge may, within the time set out in subsection (7) of this section, apply in writing to the Judge who gave the decision to state a case setting forth the facts and grounds of such decision for the opinion of the Supreme Court".

The remedy by way of Case Stated found its way in our law of criminal procedure as a result of similar provisions in the law of criminal procedure in England. As pointed out by Lord Goddard, C.J. in *Card* v. *Salmon* [1953] 1 All E.R. 324 (at p. 326), the stating of a Case is a matter arising entirely from statute; so, we have to decide what is exactly the scope of the remedy under our section 149 (1).

Having considered what is the correct interpretation, in the context of section 149 as a whole, of the word "decision" in section 149 (1), we reached the view that it means a decision finally disposing of a case, as distinct from a decision which is a merely interlocutory one; in this respect we might usefully refer to subsection (7) of section 149, which provides that where the application to state a Case is made by the Attorney-General it shall be made within fourteen days from the date of the decision in respect of which it is made and that in every other case it shall be made within ten days, and point out that had

the word "decision" been meant to include also an interlocutory one there would not have been prescribed by subsection (7) the abovementioned time-limits which are so obviously incompatible with a continuing criminal trial.

It is to be noted, also, that a question of law arising during a criminal trial may be reserved for the opinion of the Supreme Court under section 148 of Cap. 155; and, unlike section 149 (1), there is express provision in section 148 (1) that a question of law may be reserved "at any stage of the proceedings"; this phrase "at any stage of the proceedings" was originally inserted in section 24 of the Courts of Justice Law, 1935 (Law 38/35)—(to which section 148 of Cap. 155 corresponds)—after it was held in *R.* v. *Savva*, 13 C.L.R. 63, in relation to the previously existing corresponding provision which was clause 158 of the Cyprus Courts of Justice Order, 1927, that no question of law could be reserved before the termination of a criminal trial; also, in *Police* v. *Kyriacou*, 14 C.L.R. 247, it had been held that the provisions of clause 94(2) of the said Order—(from which evolved section 149 of Cap. 155)—like the provisions of clause 158 of the same Order did not allow a question of law to be reserved for the Supreme Court before the termination of a criminal trial. Then, soon afterwards, the said clause 158 was replaced by section 24 of Law 38/35 and the phrase "at any stage of the proceedings" was, as already stated, inserted; and though clause 94(2) was replaced, at the same time, by section 23 of Law 38/35—(to which corresponds section 149 of Cap. 155)—the phrase "at any stage of the proceedings" was not introduced therein, as it had been done with section 24 of the same Law; and when section 24 of Law 38/35 was replaced by section 145 of the Criminal Procedure Law, 1948 (Law 40/48)—now section 148 of Cap. 155—such phrase was maintained, but it was again not introduced when section 23 of Law 38/35 was replaced by section 146 of Law 40/48—now section 149 of Cap. 155.

The above review of the history of relevant legislative provisions confirms our already expressed view that on the present occasion the trial Court could not state a Case in respect of an interlocutory decision concerning the amendment of the particulars of the counts on which the Appellant is being tried; and we have, therefore, to remit the matter back to the learned trial Judge with the intimation that we cannot deal with it on the basis of a Case Stated.

Order accordingly.