1982 April 12

[A. LOIZOU, SAVVIDES, STYLIANIDES, JJ.]

COSTAS MICHAEL HAILIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 4273).

Criminal Law—Mens rea—Statutory offences—Corrupt practice, contrary to section 42(1)(*d*) *of the Election of the Members of the House of Representatives Law,* 1979 (*Law* 72/1979)—*Mens rea an element of the offence.*

Elections—Parliamentary elections—Corrupt practice—Consisting of making of false statement about withdrawal of a candidate—Section 42(1)(*d*) *of the Election of the Members of the House of Representatives Law,* 1979 (*Law* 72/1979)—*Mens rea an element of the offence and it is required regarding the offence as a whole including "knowledge" of the falsity of the statement made or published—Trial Judge has not misdirected himself on issue of mens rea.*

At about 8.30 in the morning of the 24th May, 1981, the day of the Parliamentary elections, as a result of information received the Officer in charge of the Election Centre at Mazotos village came into the yard of the election centre, noticed a commotion and when he turned to the official Notification indicating the names of all the candidates he saw that the name of one of the candidates, Christoforos Christofides, had two lines across it. He asked the appellant as to who had done it and the appellant replied to him that he erased it because they had heard that he had stopped, obviously another way of saying that he had withdrawn his candidature. In his statement to the Police the appellant, who was the representative of the Democratic Party at Mazotos, said that he had heard from various persons, who were talking in the yard of the Centre that Mr. Christofides

had withdrawn from his own party but he denied that he erased his name from the Notification.

The appellant was prosecuted of the offence of corrupt practice, contrary to sections 2 and 42(1)(d)* of the Election of the Members of the House of Representatives Law, 1979 (Law 72/79), the particulars of which were that he made a false statement of the withdrawal of the candidate Mr. Christoforos Christofides for the purpose of promoting the election of another candidate. The trial Judge accepted as true the evidence of the Officer in charge of the Election Centre and rejected the above denial of the appellant in his statement to the Police; and found that the required element of mens rea had been established by the prosecution, that the act of the appellant amounted to the offence of making a false declaration within the meaning of the Law.

Upon appeal against conviction counsel for the appellant mainly argued that the trial Judge did not direct his mind to the principle that mens rea was required in the sense that the said statement was false to the knowledge of the appellant, having made no finding that the appellant knew that the statement was false.

Held, that mens rea is an element of the offence created by section 42(1)(d) of Law 72/1979 and it is required regarding the offence as a whole including "knowledge" of the falsity of the statement made or published; that the trial Judge has not misdirected himself on the issue of mens rea regarding the requirement of "knowledge" of the falsity of the statement published as being an ingredient of the offence; that the whole tenor of his judgment shows that the guilty knowledge of the appellant about the falsity of the statement had been established by the evidence adduced and that there was no need for elaboration on this issue; accordingly the appeal should be dismissed.

Appeal dismissed.

Cases referred to:

Brend v. *Wood* [1946] 175 Law Times 306;

Warner v. *Metropolitan Commissioner* [1968] Cr. App. R. 373;

Sweet v. *Parsley* [1969] 53 Cr. App. R. 221;

* Section 42(1)(d) is quoted at p. 104 post.

Tesco Supermarkets Ltd. v. *Nattrass* [1971] 2 All E.R. 127;
Lim Chin Aik v. *The Queen* [1963] A.C. 160;
Sherras v. *De Rutzen* [1895] 1 Q.B. 918.

Appeal against conviction.

Appeal against conviction by Costas Michael Hailis who was convicted on the 4th November, 1981 at the District Court of Larnaca (Criminal Case No. 3218/81) on one count of the offence of corrupt practice contrary to sections 2 and 42(1)(d) of the Election of the Members of the House of Representatives Law, 1979 (Law No. 72 of 1979) and was bound over by Eliades D.J. in the sum of £200.—for 2 years to keep the Law and Regulations.

A. Poetis, for the appellant.

A.M. Angelides, Counsel of the Republic, for the respondents.

A. Loizou J. gave the following judgment of the Court. The appellant was found guilty of the offence of corrupt practice contrary to sections 2 and 42(1)(d) of the Election of the Members of the House of Representatives Law, 1979, (Law No. 72 of 1979) (hereinafter to be referred to as the "Law").

The particulars of the offence were that on the 24th May, 1981, at Mazotos in the District of Larnaca during the election of members of the House of Representatives he made a false statement of the withdrawal of the candidate Mr. Christoforos Christophides for the purpose of promoting the election of another candidate.

The ground upon which this appeal has been argued is that the learned trial Judge did not direct his mind to the principle that mens rea was required in the sense that the said statement was false to the knowledge of the appellant, having made no finding that the appellant knew that the statement was false.

The facts of the case as accepted by the learned trial Judge are as follows:-

At about 8.30 in the morning of the 24th May, 1981, as a result of information received, Spyros Charalambides, the Officer in Charge of the Election Centre at Mazotos village came out into the yard of the election centre, noticed a commotion and instinctively he turned to the Official Notification indicating

the names of all the candidates and saw that the name of Christophides had two lines drawn across it. He asked the appellant as to who had done it and the appellant replied to him that he erased it because they had heard that he had stopped, obviously another way of saying that he had withdrawn his candidature.

The appellant who in fact was the representative of the Democratic Party at Mazotos, placed a small table outside the election centre, in order to assist the voters who were going to vote for his party. In his statement to the Police, which he gave soon after the aforesaid incident, he said that he had heard from various persons, who were talking in the yard of the Centre that Mr. Christofides had withdrawn from his own party but denied that he erased the name of the said candidate from the Notification and he did not know who had done it.

However, the learned trial Judge accepted as true the evidence of Spyros Charalambides and rejected the subsequent denial of the appellant, contained in his statement to the Police.

On the evidence before him the learned trial Judge found that the required element of mens rea had been established by the prosecution, that the act of the appellant amounted to the offence of making a false declaration within the meaning of the Law and found him guilty of the charge preferred against him.

In arriving at this conclusion and after dealing with the principles of Law governing the question of intent and mens rea in criminal offences with which we shall be shortly dealing, he also bore in mind that the withdrawal of a candidate could only be effected under section 23 of the Law by the filing of a written notice by the candidate to the person in charge of the elections and that the Notification at Mazotos village was the official document indicating the names of the candidates and any unlawful interference with its contents could change the mind and possibly the behaviour of voters in the village who were going to cast their votes.

As stated by Lord Goddard in *Brend* v. *Wood* [1946] 175, Law Times 306:

> "It is of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that, unless a statute, either clearly or by necessary

implication, rules out mens rea as a constituent part of a crime, the Court should not find a man guilty of an offence against the criminal law unless he has a guilty mind".

At Common Law mens rea was regarded as an essential element of every crime (*Warner* v. *Metropolitan Police Commissioner* [1968] 52 Cr. Ap. Rep. 373) and there does not appear to be a case in which the legislature has dispensed with the need for mens rea when giving a statutory form to a Common Law crime. There are, however, statutory offences where for a number of reasons persons can be found guilty whether or not there exists mens rea for such particular offence being sufficient only the actus reus which constitutes it, the belief, intention or state of mind of the culprit being immaterial and irrelevant. Such offences are known as offences of strict or absolute liability. They usually arise under regulatory legislation and it is in exceptional circumstances that serious offences of a truly criminal nature are found to have been committed in spite of the absence of mens rea.

An extensive examination of the subject is to be found in the case of *Warner* v. *Metropolitan Police Commissioner* (supra) by the House of Lords and in the cases of *Sweet* v. *Parsley* [1969] 53 Cr. App. Rep. 221 and *Tesco Supermarkets Ltd.* v. *Nattrass* [1971] 2 All E.R. 127, where the liability of employers for the acts of their servants and the difficulties that arise in relation thereto are examined.

Invariably these offences of strict liability are created on account of the fact that the burden of proof of mens rea which is upon the prosecution is often a difficult and onerous one (see Tesco (supra)), whereas proof of the actus reus is easier and is discharged by calling witnesses as to the facts of the case. Given, however, the proper circumstances, Courts hold from time to time that the legislature intended to rule out mens rea as an element of an offence (*Sweet & Parsley* (supra)). Both, the Privy Council in *Lim Chin Aik* [1963] Appeal Cases 160, and the House of Lords in *Warner's* case (supra) have expressly approved what has come to be known as the locus classicus on the subject which can be found in the judgment of Wright J. in *Sherras* v. *De Rutzen* [1895] 1 Q.B. 918:

"There is a presumption that mens rea ——— is an essential

ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered".

In deciding as to whether an offence of strict liability or not has been created by a statute, the actual words of the relevant section have in the first place to be examined. If there is no clear intention, then and only then, Courts will proceed to examine all relevant circumstances in order to decide whether the legislature intended to create an offence of strict liability. Wright J. in *Sherras* case (supra) referred to the presumption of mens rea and that it could be displaced by "the subject matter of the enactment".

We do not intend to proceed any further on this subject, except that the words of a particular section may immediately show that there was an intention to create an offence of strict liability or that mens rea was required in some form or other, either regarding the offence as a whole or with regard to some particular part of the actus reus.

Section 42(1)(d) reads as follows:

"Any person who—

.....

(d) makes or publishes before or during any election, for the purpose of promoting the election of any candidate, any false statement of the withdrawal of any other candidate at such election;

.....

shall be guilty of the criminal offence of corrupt practice, and shall be liable upon conviction, ... to imprisonment not exceeding six years or to a fine not exceeding C£200.—and the Court trying the case may order the deprivation of voting and of being registered as an elector for a period not exceeding seven years for any election under this law or any other law amending or replacing this law".

This section corresponds in its substance to section 91(4) of the Representation of the People Act of 1949 which reads as follows:

"Any person who, before or during an election, knowingly publishes a false statement of the withdrawal of a candidate at the election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice:

Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this subsection committed by his agent other than his election agent".

The fundamental difference is the omission from our own section of the word "knowingly" that precedes the word "publishes" in the English section. But its absence is no indication that the doctrine of mens rea does not apply (see per Lord Reid in *Sweet* v. *Parsley* (supra) at p. 225). See also *Archbold*, Criminal Pleading, Evidence and Practice, 40th Ed., para. 1443(b), where it is, in addition, stated that:

"There is considerable authority for the view that in the criminal law 'knowledge' includes 'wilfully shutting one's eyes to the truth. See e.g. per Lord Reid in *Warner* v. *D.P.P.* [1968] 52 Cr. App. R. 373, H.L., at p. 389; *Atwal* v. *Massey* [1971] 56 Cr. App. R. 6, D.C. The tendency of the courts at present however is towards the view that this is a matter of evidence, and that nothing short of actual knowledge will suffice. See *R.* v. *Grainge* [1974] 59 Cr. App. R. 3 and *R.* v. *Griffiths* [1974] 60 Cr. App. *R.* 214, explaining *Atwal* v. *Massey*, ante, and *R.* v. *Stagg* [1978] Crim. L.R. 227".

In *Halsbury's Laws of England*, 4th Ed., Vol. 11, para. 18, the following considerations are given as relevant in determining whether a statutory provision does or does not impose strict liability:-

"(1) the language of the provision creating the offence, and in particular any expression indicating that some mental element is required, although the absence of any such expression does not give rise to a compelling inference that mens rea is excluded;

(2) whether the act is criminal in the generally accepted sense

or is an act which, in the public interest, is prohibited under a penalty;

(3) the nature of the mischief at which the provision is aimed and whether the imposition of strict liability will tend to suppress the mischief, although strict liability will not be inferred simply because the offence may be described as a grave social evil. Where the elements of the offence will be imposed only where the language of the provision creating the offence is incompatible with any other interpretation".

The element of mens rea was found to be required also in relation to the corresponding English provisions. In *Halsbury's Statutes of England*, 3rd Ed., Vol. 11, with regard to the false statement of fact, mens rea is found to be an element of the offence and in a Note to section 91 of the aforesaid Act of 1949, at p. 633, it is stated:

"If a false statement is made by a person having no reasonable ground for believing it to be true, it is not material for the purposes of this section that the statement is made by way of counter-charge to an original charge or that the candidate affected has in some way by his speech or publication provoked the making of the statement".

Also with regard to the "knowledge" and the meaning of the word "knowingly" reference is made to the interpretation of the word "knows" which is also found in section 47 of the Act where the following appears at p. 594:

"There is authority for saying that where a person deliberately refrains from making inquiries the results of which he might not care to have, this constitutes in law actual knowledge of the facts in question; see *Knox* v. *Boyd*, 1941, S.C. (J.) 82, at p. 86, and *Taylor's Central Garages (Exeter) Ltd.* v. *Roper* (1951), 115 J.P. 445, at pp. 449, 450, per Devlin, J.; and see also, in particular, *Mallon* v. *Allon* [1964] 1 Q.B. 385; [1963] 3 All E.R. 843, at p. 394 and p. 847, respectively. However, mere neglect to ascertain what would have been found out by making reasonable inquiries is not tantamount to knowledge; see *Taylor's Central Garages (Exeter) Ltd.* v. *Roper*, ubi supra, per

Devlin, J.: and cf. *London Computator Ltd.* v. *Seymour* [1944] 2 All E.R. 11; but see also *Mallon* v. *Allon*, supra".

Guided by the aforesaid exposition of the law on the matter we have no difficulty in concluding that mens rea is an element of the offence created by section 42(1)(d) of the law and it is required regarding the offence as a whole including "knowledge" of the falsity of the statement made or published. The fact that the words "knows" or "knowingly" is to be found with regard to other offences created by the same section and omitted here, makes no difference. In the context, however, of this provision the requirement of knowledge of the falsity of the statement includes definitely wilfully shutting one's eyes to the truth or having no reasonable ground for believing to be true or where a person deliberately refrains from making inquiries the results of which he might not care to have and does not necessarily mean proof only of actual knowledge.

With these principles in mind we turn now to the case before us and we have no difficulty in holding that the learned trial Judge has not misdirected himself on the issue of mens rea regarding the requirement of "knowledge" of the falsity of the statement published as being an ingredient of the offence. The whole tenor of his judgment shows that the guilty knowledge of the appellant about the falsity of the statement had been established by the evidence adduced and that there was no need for elaboration on this issue, that is why he examined in more detail the necessity of mens rea regarding the purpose for which that false statement, namely, the erasure of the name of candidate Christofides from the notification in question was made.

On more than one occasion in his judgment he speaks of such knowledge and in dealing with the element of mens rea in the following passage of his judgment one can clearly see that he directed himself clearly on the matter both as to the burden of proof and as to the necessity that the falsity of the statement had presupposed knowledge about it, hence his reference to a forged bill *knowing* it to be forged:

> "Where mens rea is a necessary ingredient of the offence it must be proved by the prosecution. When the act is unequivocal, the proof that it was done may be evidence of the intention which the nature of the act conveys as

for example where a person utters a forged bill *knowing*—(the underlining is ours)—it to be forged, and meaning that the bill should be taken as genuine the inevitable conclusion is that he intended to defraud (See *R.* v. *Hill* (1838) 8 C. and P., p. 274)".

For all the above reasons this appeal is dismissed.

Appeal dismissed.