1984 January 27

[TRIANTAFYLLIDES, P., LORIS, PIKIS, JJ.]

GEORGHIOS A. GEORGHIOU,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeals Nos.* 4458, 4459).

Criminal Law—Evidence—Statement of appellant to police—Taken through unconstitutional action—Implications—Likelihood of prejudice from disclosure of context of statement to the trial Court.

Criminal Procedure—Summary offences—Power to commit for trial to the Assize Court—Exists under sections 40 *and* 41 *of the Criminal Procedure Law, Cap.* 155 *providing for joinder of offences and joinder of offenders.*

Evidence—Hostile witness—Declaring a witness hostile—Proper stage —Use and effect of the evidence of a hostile witness.

Criminal Law—Forgery—Section 331 *of the Criminal Code Cap.* 154*—Concept of "intent to defraud"—False documents capable of laying the foundations of a forgery charge—Official document —Definition—Meaning of "official document" in section* 337 *of Cap.* 154*.—Documents issuing from the Central Bank "official documents" within the meaning of s.* 337*.*

Criminal Law—Sentence—Forgery and uttering of a receipt and forgery and uttering of an official document—One year's imprisonment—Appellant a member of the House of Representatives who has forfeited his seat whereas his law practice was shattered —Sentence reduced to six months' imprisonment.

The appellant a member of the House of Representatives and a practising advocate at Larnaca, was prosecuted with the leave of the Supreme Court, which was given under Article 83.2 of the Constitution, and convicted by the Assize Court

of Larnaca on two counts for the forgery and uttering of a receipt ("exhibit 11") and two counts for the forgery and uttering of an official document, namely faked authorisation of the Central Bank of Cyprus for the export of money ("exhibit 7") and sentenced to concurrent sentences of one year's imprisonment on each count. The offences were committed whilst he was acting for the administratrix of the estate of a deceased person who died in England but was the owner of movable and immovable properties in Cyprus. Among such property was a cash deposit for £3,659 with a bank in Cyprus which the administratrix intended to transfer to U.K. where it was needed for the family. Being unable to transfer it, she endorsed a cheque of C£3,559 in favour of the appellant, leaving it to him to make the necessary arrangements for the validation of the administration in Cyprus, and authorisation of the transfer of the money to the U.K. This cheque was cashed by the appellant on 13.7.1981; and the biggest part of the proceeds, C£3,400 was deposited in his personal account with the Ayios Lazaros Branch Larnaca, of the Cyprus Popular Bank Limited.

The appellant failed to dispatch the money to England and when, in the Summer of 1982 the representatives of the administratrix pressed for the money and threatened to take legal action against him, he furnished them with a receipt—exhibit 11—issued from the Cyprus Popular Bank, purporting to evidence that the money had been deposited in the name of the Administratrix. As the content of this receipt was false the representatives of the administratrix kept pressing for the money and on 16.10.1982 the appellant issued a cheque in the name of the administratrix for an amount of C£3,600. This amount was computed on the basis of the amount received by the appellant, coupled with the interest that the money would probably attract if deposited with a commercial bank, less C£104 legal fees for services rendered. The appellant furnished the said representatives, before the 16.10.1982 with a photostatic copy of a letter of the Central Bank of Cyprus—exhibit 7—purporting to authorise, subject to terms specified therein, the appellant to remit the money to the administratrix in U.K. The content of this letter was altogether false and, evidently, fabricated.

At the close of the case for the prosecution, the trial of the appellant was suspended for a time, following the reference to

the Supreme Court by the Assize Court of two legal questions reserved for the opinion of the Supreme Court under s.148 of the Criminal Procedure Law, namely, whether obtaining a statement under caution from a Representative, constituted an act of prosecution under Article 83.2 and, if so, if the answer to the first question was in the affirmative, the opinion of the Supreme Court was sought in order to elicit the fate of a statement obtained in breach of the provisions of Article 83.2. The Supreme Court answered, by majority, both questions in the affirmative, holding that obtaining a cautionary statement from a suspected Representative, was an act of prosecution under Article 83.2, and that failure to secure the prior leave of the Supreme Court invalidated the statement.

Upon appeal against conviction and sentence counsel for the appellant mainly contended:

(a) That the questioning of the appellant without the prior leave of the Supreme Court, deprived not only the statement of any effect but vitiated the proceedings as a whole, rendering them null in their entirety.

(b) That the conviction on counts 1 and 2 of the offences of forgery must be quashed for lack of jurisdiction on the part of the Assize Court to try them*.

(c) That the finding of the trial Court that, exhibit 11 was the document furnished by the appellant to the representatives of the administratrix was unwarranted by the evidence that should at the least lead the Court to entertain doubts about its provenance.

(d) That the conviction of the appellant on all counts was bad for lack of proof of specific intent to cause financial injury to a particular person, in this case the beneficiary of the money, namely the administratrix.

(e) That the conviction of the appellant on counts 3 and 4 must be set aside, because of failure on the part of the prosecution to prove that the document was an

* This contention was based on the ground that the offences, subject-matter of counts 1 and 2 were crimes punishable under the Criminal Code with a maximum of three years' imprisonment and so they were amenable to the Summary Jurisdiction of the District Court.

"official" document within the meaning of s.337 of Cap. 154.

Regarding contention (c) above appellant admitted furnishing the said representative with a receipt containing false particulars, but denied that the receipt was the one produced by the Prosecution—exhibit 11. The doubts about the identity of exhibit 11 arose from the evidence of prosecution witness Zourides whose description of the document tallied with another exhibit—exhibit 20. Counsel contended in this connection that the Assize Court faultly exercised its discretion to allow the treatment of witness Zourides as a hostile witness and subsequent cross-examination in response to a belated application of the prosecution made after cross-examination of the witness by counsel for the appellant.

Held, per Pikis J., Loris J. concurring and Triantafyllides P. concurring with the outcome:

(1) That evidence stemming from breach of a citizen's constitutional rights is totally inadmissible as well as any other evidence deriving therefrom; that there is no reason whatever to doubt that the Assize Court found their verdict on admissible evidence and excluded from consideration the statement rejected as inadmissible; that not only there was evidence supporting the findings of the Court, but such evidence was indicated in the judgment of the Court and evaluated in a most comprehensive way; that there is nothing before this Court to suggest that any use whatever had been made of the inadmissible evidence and, far less still that, any reliance was placed upon it by the trial Court; accordingly contention (a) must fail.

Held, further, that the appellant has not suffered prejudice limiting his freedom in the preparation of his defence from the production of the inadmissible statement because once an inadmissible statement is properly excluded from consideration, the outcome of the proceedings remains unaffected; and that any other approach would inevitably put in jeopardy the entire criminal process, whenever accused made an inadmissible statement.

(2) That the joinder of offences and joinder of offenders is a legal expedient that makes possible joinder whenever it serves the interests of justice, either because of the nature of the offences

and the connection between them, or the participation of a number of persons in their commission (see sections 40 and 41 of the Criminal Procedure Law, Cap. 155); that section 41 of Cap. 155 providing for the joinder of offenders, expressly contemplates the possibility of joinder of persons accused of indictable as well as summary offences; that section 110 of Cap. 155 makes, subject to necessary modifications the provisions of sections 40 and 41 applicable to trials on information; that, therefore, the four charges were properly joined and committal thereupon to the Assize Court, and trial thereafter upon information filed by the Attorney-General founded on the summaries made available to the defence, was in no way irregular; accordingly contention (b) must fail.

(3) That the Assize Court made a very detailed analysis of every aspect of the case pertaining to the credibility and value of the testimony of witness Zourides, and properly directed itself regarding discrepancies that existed between the testimony of the two principal witnesses for the prosecution, namely the representatives of the administratrix; that they accepted them as witnesses of truth, attributing discrepancies in their testimony to lapses of inaccuracies of memory; that the finding of the Assize Court that exhibit 11 was the document furnished by the appellant and that it contained the particulars appearing therein, is properly founded on evidence before the Court and there is no reason whatever for interfering with it; accordingly contention (c) must fail.

Statement of the law regarding the proper stage of declaring a witness hostile and the use and effect of his evidence at pp. 92-94 *post.*

(4) That the statutory presumption as to the existence of an intent to defraud, established by s. 334 - Cap. 154, throws ample light on the concept of "intent to defraud" in the context of the crime of forgery, defined by s.331; that intent to defraud is presumed to exist whenever at the time the false document was made "there was in existence a specific person, ascertained or unascertained, capable of being defrauded thereby"; that the presumption is not rebutted, as provided in s.334, by proof that the forgerer took measures to prevent such persons being defrauded; that section 334 clearly suggests that the concept of "intent to defraud", in the context of the definition of "forgery", is identi-

cal to the concept of "intent to defraud" under English law on the subject of forgery; that, consequently, the Assize Court rightly sought guidance from English caselaw, particularly the case of *Welham v. D.P.P.* [1960] 1 All E.R. 805, and held that "intent to defraud" in the context of section 331* of the Criminal Code Cap. 154 does not entail the existence of an intent to injure a specific person and that, moreover, injury is not confined to a financial one; that the trial Court correctly directed itself on the nature of the intent necessary to sustain the crime of forgery, whereas their findings were perfectly open to them; accordingly contention (d) must fail.

(5)(a) That the document - exhibit 7 - was false and was given to the representatives of the administratrix in order to induce them to believe that he had taken necessary steps for the remission of the money abroad; that the partinent question is whether the false document was prepared and uttered with intent to defraud; that whether it was given at the time of repayment of the money, or earlier, the crimes would be committed so long as the appellant intended, by means of propounding the false document in question, to induce them to believe that he had carried out his duties to the administratrix; that appellant had repeatedly represented he had secured permission for the remission of the money abroad; that this document was designed to induce them to believe he had taken proper steps in the discharge of his duties in a way likely to cause the administratrix to act to her detriment; that there is no room for interfering with the findings of the trial Court that exh. 7 was given before the cheque.

(5)(b) That a person is deemed to make a false document if he "makes a document purporting to be what in fact it is not" (see s.333(a) of Cap. 154); that exhibit 7 was a document styled as emanating from the Central Bank and purported to regulate a matter within the sphere of authority of the Bank: that the trial Court found as a fact, on a consideration of the document and its content as a whole that, it was capable of deceiving persons of ordinary observation and, in fact, did deceive the representatives of the administratrix who regarded it as genuine; that the trial Court reminded that the test was not the reaction of persons

* Section 331 provides as follows:

"Forgery is the making of a false document with intent to defraud".

possessed of specialised knowledge in matters dealt with by exhibit 7, but persons of ordinary observation; that here, again, there is no error or misdirection on the part of the trial Court.

(5)(c) That "official document", in the context of s.337, is a document that has the imprint of State authority and is issued in the course of or in the exercise of functions pertaining to that office's sphere of authority; that the Constitution provides for the establishment of an issuing bank that may be turned into a Central Bank (see, Articles 118 and 121 of the Constitution); that the Central Bank is entrusted with the formulation and execution of monetary and credit policy and, generally, assigned a dominant role in matters of monetary and financial policy; that it performs functions that at common law are assigned to the State by virtue of the Crown prerogative (see, Halsbury's Laws of England, 4th ed., Vol. 8, para. 1018); that the Central Bank is constitutionally sanctioned for the transaction and discharge of important affairs of the State; that documents issuing from the Bank in the exercise or discharge of its powers are properly classified as official documents (pp. 99–100 post).

(5)(d) - *After dealing with the meaning of "forgery" within section 337 of Cap. 154 and its relationship to "Official"* (vide pp. 100–101 post) - that there is nothing in s.337 suggesting it was intended to confine falsity in relation to "official" to any of the categories of falsity enumerated in s.333; that, consequently, the crime is committed whenever a document is fabricated in its entirety and purports to be official, provided always that it is apt, because of its content, to deceive persons of ordinary observation; that it is in this spirit, though not as explicitly, that the Assize Court approached the definition of the crime in s.337; that there is no misdirection in law whatever, nor is there any room for disturbing their finding that exhibit 7 was a forged official document.

(6) That though the higher one stands the higher becomes his duty to observe the law it cannot be overlooked that the sentence of imprisonment is not the only punishment of appellant; that he forfeited his seat as a Member of the House of Representatives - no small punishment by any measure - whereas his law practice, the means of support of himself and his family, was shattered, no mean punishment either; that faced with this human tragedy,

this Court decided, not without reluctance, to reduce the sentence of one year's imprisonment on each count to one of six months' imprisonment on each count to run concurrently.

Appeal against conviction dismissed. Appeal against sentence allowed.

Cases referred to:

In re Georghiou (1983) 2 C.L.R. 1;

R. v. Thompson, 61 Cr. App. R. 108;

Crane v. D.P.P. [1921] All E.R. Rep.19;

R. v. Rose and Others [1982] 2 All E.R. 731 (H.L.);

R. v. Gee and Others [1936] 2 All E.R. 89;

D. P. P. of Jamaica v. White [1977] 3 All E.R. 1003 (P.C.);

Police v. Georghiades (1983) 2 C.L.R. 33;

Pilavakis v. The Queen, 19 C.L.R. 163;

Nestoros v. Republic, 1961 C.L.R. 217;

Vrakas and Another v. Republic (1973) 2 C.L.R. 139;

R. v. Norfolk [1953] 1 All E.R. 346;

Hinis v. The Police (1963) 1 C.L.R. 14;

Bannister v. Clarke, XXVI Cox. C.C. 21;

R. v. Quayle [1938] 3 All E.R. 674;

Constantinides v. Republic (1978) 2 C.L.R. 337;

R. v. Ritson [1869] L.R.1 C.L.R. 200;

R. v. Pestano and Others [1981] Crim. L.R. 397;

Welham v. D.P.P. [1960] 1 All E.R. 805;

R. v. Martin, 168 E.R. 1353;

R. v. Hill, 173 E.R. 492;

Scott v. Commissioner of Police [1974] 3 All E.R. 1032;

A.G.'s Reference (No 1 of 1981) [1982] 2 All E.R. 417;

R. v. Allsop, 64 Crim. App. Rep. 29;

Wall, 1800 2 East P.C. 923;

Trendtex Trading Corpn. v. Central Bank [1977] 1 All E.R. 881;

Mellenger and Another v. New Brunswick Development Corpn. [1971] 2 All E.R. 593;

Kyriakides v. Palmer, 16 C.L.R. 17;

Stephanou v. Police (1972) 2 C.L.R. 1140.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Georghios A. Georghiou who was convicted on the 30th August, 1983, at the Assize Court of Larnaca (Criminal Case No. 2855/83) on two counts of the offence of forgery contrary to section 331 and 335 of the Criminal Code, Cap. 154 and on two counts of the offence of uttering a forged document contrary to sections 20, 339, 335 and 337 of the Criminal Code, Cap. 154 and was sentenced by Papadopoulos, P.D.C., Constantinides, S.D.J. and G. Nicolaou, D.J. to concurrent terms of imprisonment of one year on each count.

G. Cacoyiannis, E. Efstathiou, M. Christofides, Chr. Triantafyllides and M. Michaelides, for the appellant.

L. Loucaides, Deputy Attorney-General of the Republic with *A. Papasavvas*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The first judgment of the Court will be delivered by Mr. Justice Pikis.

PIKIS J.: The prosecution and conviction of the appellant, a Member of the House of Representatives, was legally eventful because the Supreme Court was required, on three occasions before his conviction and on one occasion after his conviction, to construe Article 83 of the Constitution, decide the principles and procedure governing the prosecution of a Representative and, lastly, the implications of his conviction, recorded by the Assize Court of Larnaca on 30.8.83, on four counts; notably, two counts for the forgery and uttering of a receipt, respectively, and two counts for the forgery and uttering of an official document, namely faked authorisation of the Central Bank of Cyprus for the export of money, respectively. The case will be rid of some of its outward complexities and made easier to follow, if we start by recounting some of the indisputable facts that led to the prosecution and conviction of the appellant.

Savvas Savva, a resident of the United Kingdom of Cypriot origin, died in England on 4th June, 1978, leaving a wife and children. Letters of administration were granted to his wife, Doris Savva, who was appointed personal representative of the deceased. As the deceased was the owner of movable and immovable properties in Cyprus, need arose to appoint an

advocate in Cyprus to transact the business of the administration. Doris Savva turned for advice to two friends of the family, namely, Artemis Chari and Antonakis Christodoulou. On the recommendation of the latter, the appellant, a practising advocate at Larnaca, was appointed to act for the administratrix, an assignment he accepted, requesting Doris Savva to furnish him with the necessary documents evidencing her appointment and authority. Doris Savva paid two visits herself to Cyprus and had meetings with the appellant in connection with the transaction of the affairs of the administration. The property deceased owned in Cyprus consisted of -

(a) A cash deposit with the Achna Co-Operative Credit Society for C£3,659.- and,

(b) two plots of immovable property in the Famagusta district.

On her second visit to Cyprus, Doris Savva withdrew the money deposited in her deceased husband's name with the aforementioned Co-Operative Society, but was unable to transfer or remit it to U.K. because of restrictions under the exchange control Law. All along it was her avowed purpose, known to everyone, to have the funds transferred to U.K. where it was needed for the family. Being unable to transfer it, she cashed a sum of C£100.- she apparently disbursed in Cyprus, and endorsed a cheque of C£3,559.- in favour of the appellant, leaving it to him to make, as promised, the necessary arrangements for the validation of the administration in Cyprus, and authorisation of the transfer of the money to the United Kingdom. The cheque was cashed by the appellant on 13.7.81. The biggest part of the proceeds, notably C£3,400.-, was deposited in his personal account with the Ayios Lazaros branch Larnaca, of the Cyprus Popular Bank Limited.

Notwithstanding repeated assurances given by the appellant to the representatives of Mrs. Savva in Cyprus, and herself in person, that all necessary steps were taken with due expedition for the issue of letters of administration in her name in Cyprus and the dispatch of the money to U.K., nothing whatever had been done by the appellant; while the money of the deceased remained deposited in his personal account. Not only in person but in writing as well, appellant confirmed all was in order and that nothing remained undone on his part to conclude the affairs

of the administration. Significant is his letter to Mrs. Savva of February, 1982, verifying that application had been made to the District Court of Famagusta "for the registration of the immovable property in the name of the heirs" and, secondly, that an application had been made to the Central Bank of Cyprus "to take out of Cyprus the cash property of the estate", adding that the permission of the Central Bank of Cyprus for the remission of the money to U.K. had been granted. Nevertheless, it was impossible to have the money directed to U.K. before valuation of the immovable property by the "Director of Tax Authorities" and the exemption of the property from the payment of estate duty. In the meantime, Mrs. Savva was assured in these terms, as to the fate of the money she entrusted to him: "By now the money are deposited with same Bank in an interest bearing account according to Court directions". The Bank is not specified but one is left to infer that the money had been lodged with the Central Bank of Cyprus in a separate account earmarked according to Court directions. Appellant remained totally inactive and surprising as it may appear, he took no steps whatever to carry out the assignment he undertook on behalf of Mrs. Savva. But he continued to be active in deceiving Mrs. Savva as well as her representatives in Cyprus about his doings. Noticeable is his letter addressed to Mrs. Savva again, of 26.7.82, repeating in terms that the only obstacle to the dispatch of the money lay in the objections of the "Director of Tax Authorities", arising from inability on his part to certify that deceased had no other property in Cyprus but anticipated that objections would be soon withdrawn by arranging for a charge to be made on the immovable property of the deceased in Cyprus, known to the authorities. He gave one more assurance designed to allay her anxiety about the fate of the money, along these terms: "I have already given a copy of the receipt to your representative Mr. Nakis."

In the summer of 1982 Doris Savva and her representatives became impatient with the appellant, laying increasingly less trust on his assurances. The representatives of Mrs. Savva, Messrs. Charis and Christodoulou, kept pressing for the money, threatening at some stage legal action against him. Labouring under this pressure the appellant furnished, in July or August 1982, the representatives of Mrs. Savva with a receipt purporting to evidence that the money had been deposited in the name of

Mrs. Savva. The circumstances under which the receipt was given, particularly the person to whom it was handed over, was a matter of dispute before the Assize Court. More important still, was the controversy of the parties about the content of this receipt. The receipt allegedly given to the representatives of Mrs. Savva, was identified before the Assize Court as exhibit 11. As the content of the receipt was false, it could not disabuse for long the representatives of Mrs. Savva, of the impression that appellant was doing nothing in the direction of carrying out his assignment. His readiness to resort to falsehood became, it seems, more than apparent to them. They kept pressing for the money. To gain their confidence, he went so far as to represent in writing that the money had been remitted to Mrs. Savva through a branch of Midland Bank in U.K. (A note to that effect was made at the back of the Death Certificate - exhibit 8). Mrs. Savva looked in vain for the money for none had been sent. It was one more lie to ward off the pressure of his clients to carry out the assignment he undertook.

On 16.10.82 the appellant issued a cheque in the name of Doris Savva, payable three days later, on 19.10.82, for an amount of C£3,600.-. This amount was computed on the basis of the amount received by the appellant, coupled with the interest that the money would probably attract if deposited with a commercial bank, less C£104.- legal fees for services rendered. The appellant furnished the representatives of Mrs. Savva, before or at the time of payment of the money due, with a photostatic copy of a letter of the Central Bank of Cyprus, purporting to authorise, subject to terms specified therein, the appellant to remit the money to Mrs. Savva in U.K. The Assize Court found, on examination of the evidence before it, that the letter had been given to Mr. Christodoulou before 16.10.82 as an act of further reassurance by the appellant that all necessary steps were being taken toward sending the money to the United Kingdom.

On 1.11.82 Artemis Charis visited the Central Bank of Cyprus in order to inquire about the remission of the money to Mrs. Savva. He showed to Mr. Kalavanas, a first grade officer of the Central Bank of Cyprus, the document given to him by the appellant purporting to authorise export of the money, identified before the Assize Court as exhibit 7. It was a letter purporting to emanate from the Central Bank of Cyprus, bearing the signa-

ture of an officer of the Central Bank of Cyprus who had retired prior to the date of its issue, namely, Mr. Michaelides. Neither in form nor in particulars did exhibit 7 correspond to the formalities and substantive content prescribed by the Central Bank of Cyprus for the authorisation of the export of money abroad. Mr. Kalavanas became apprehensive as to the origin of the letter, and suspicious about the circumstances of its issue. It did not take long to ascertain that its content was altogether false and, evidently, fabricated. The day following, the matter was reported to the police who took up investigations in the matter.

The police conducted a vigorous investigation that soon revealed that the content of the receipt, exhibit 11, was false and probably the product of forgery. A similar conclusion was drawn with regard to the letter portrayed as emanating from the Central Bank of Cyprus - exhibit 7. Possessed of evidence tending to incriminate the appellant, they interrogated him under caution. This cautionary statement was obtained without the prior leave of the Supreme Court, an indispensable prerequisite, as the Supreme Court later found, to lawfully confronting a Member of the House of Representatives with incriminating material. Soon afterwards the investigation was completed and the leave of the Supreme Court was sought for the prosecution of the appellant in accordance with the provisions of the Criminal Procedure Law, Cap. 155. The Supreme Court was asked to lift the immunity from prosecution conferred upon a Parliamentarian by Article 83.2 of the Constitution, during his term of office as a Representative, and authorise his prosecution. The application was taken by the Full Bench of the Supreme Court. A preliminary issue raised before the Supreme Court, was whether the application properly emanated from the Attorney-General, the Authority competent under the Constitution, to initiate proceedings against a Representative. The Supreme Court was divided with regard to the validity of the application (see, *In Re Georghiou* (1983) 2 C.L.R. 1). The majority decided the application had properly been made on behalf of the Attorney-General, whereas the minority held the application had not originated from the Attorney-General, an omission that rendered the application abortive. Following the majority decision, the Court heeded the application as a valid step, properly setting in motion the process of examining the justification and propriety of lifting immunity and giving leave to prosecute the Repre-

sentative. It was held, unanimously this time subject to the earlier reservations of the dissenting members of the Court as to the validity of the application, that the nature and circumstances of the case justified the grant of the leave of the Supreme Court to prosecute the appellant on the charges outlined in the application (see. *In Re Georghiou* (1983) 2 C.L.R. 1).

Thereafter, proceedings were initiated before the District Court with a view to the committal of the appellant to the Assize Court. Pursuant to the provisions of the Criminal Procedure (Temporary Provisions) Law, 1974 a preliminary inquiry was dispensed with upon the certification of the Attorney-General that it was unnecessary and upon furnishing the appellant with a summary of the statements made to the police by prosecution witnesses. Appellant was put on trial on an information preferred on behalf of the Attorney-General on two counts relating to the forgery and utterance of exhibit 11 - Counts 1 and 2, respectively - and two counts for the forgery and utterance of exhibit 7 - Counts 3 and 4, respectively.

At the close of the case for the prosecution, the trial of the appellant was suspended for a time, following the referral to the Supreme Court by the Assize Court of two legal questions reserved for the opinion of the Supreme Court under s.148 of the Criminal Procedure Law. Two questions were raised, firstly, whether obtaining a statement under caution from a Representative, constituted an act of prosecution under Article 83.2 and, if so, secondly, if the answer to the first question was in the affirmative, the opinion of the Supreme Court was sought in order to elicit the fate of a statement obtained in breach of the provisions of Article 83.2. The Supreme Court answered, by majority, both questions in the affirmative, holding that obtaining a cautionary statement from a suspected Representative, is an act of prosecution under Article 83.2, and that failure to secure the prior leave of the Supreme Court invalidates the statement. Regrettably, only the decision of the Supreme Court was announced and not the reasons in support, something that would reveal the raison d'etre of the judgment. On the other hand, the complaint of the appellant voiced in his statement from the dock, repeated before us, of suffering prejudice from this omission, cannot be carried too far for, the reasoning of the Court could not have altered or modified the answers of the Supreme Court

to the questions reserved. In virtue of the decision of the Supreme Court, the statement made by the appellant to the police, was invalidated for all purposes. In making his defence appellant could have been in no doubt as to the evidence that could properly be relied upon against him. Appellant made a statement from the dock and wound up his defence by calling two witnesses.

At the end of the day the Assize Court found the appellant guilty as charged, and convicted him to concurrent terms of one year's imprisonment on each count. They found as a fact that the two documents, namely, exhibits 11 and 7, had been prepared by the appellant and constituted forgeries uttered in that spirit, fraught throughout with an intent on the part of the appellant to defraud.

A while later, the Supreme Court was required to decide whether the conviction of the appellant entailed -

(a) Forfeiture of his seat as a Representative, and

(b) his immediate incarceration.

To both questions an affirmative answer was given by the majority of the Supreme Court.

Note: The majority judgments were made available to the parties.

THE APPEAL:

Appellant challenges the validity of his conviction on constitutional, legal, as well as factual grounds. Also, he questions the sentence as excessive. Below, we shall briefly reproduce, firstly the grounds of appeal in what we perceive to be their logical sequence and, then, deal with them in that order. Some of the grounds will be grouped together, though separately advanced, in the interests of convenience and coherence:-

(A) *Initiation of the Prosecution:*

The questioning of the appellant without the prior leave of the Supreme Court, deprived not only the statement of any effect but vitiated the proceedings as a whole, rendering them null in their entirety. We were invited to order either a new trial on the principles bearing on the issue of a venire de novo or, more appropriately still, quash the conviction and acquit the appellant

because of the irremedial prejudice appellant must be deemed to have suffered because of the misinitiation of the proceedings. A retrial or acquittal is also warranted, independently of our decision on the constitutional issue, because of the prejudice suffered by the appellant as a result of the content of the invalid inadmissible statement featuring in evidence until the close of the case for the prosecution, a statement relied upon in part by the Court in making its findings. Moreover, freedom of the appellant to map his defence, was seriously curtailed.

(B) *Conviction of the appellant on two of the four counts, arising from exhibit 11:*

Conviction on counts 1 and 2 must be quashed for lack of jurisdiction on the part of the Assize Court to try them. Notwithstanding the competence of the Assize Court to try any offence punishable by the Criminal Code, committed within the Republic of Cyprus, conferred by s.20(1) of the Courts of Justice Law - 14/60, the exercise of this jurisdiction is dependent on the prior observance of other provisions of Law 14/60, namely, those set out in sections 24 and 26, and those of the Criminal Procedure Law - Cap. 155, making trial of summary offences exclusively amenable to the jurisdiction of the District Court, subject to rare exceptions.

(C) *Conviction of the appellant on counts 1 and 2, is unsafe for the following reasons, additional to those indicated above:*

The finding of the trial Court that, exhibit 11 was the document furnished by the appellant to the representatives of Mrs. Savva, was unwarranted by the evidence that should at the least lead the Court to entertain doubts about its provenance.

(D) *Conviction of the appellant on all counts is bad for lack of proof of specific intent to cause financial injury to a particular person, in this case the beneficiary of the money, namely, Mrs. Savva:*

In the context of the crime of forgery, "intent to defraud" connotes, in the contention of the appellant, a particular identifiable intent to inflict financial loss. In the judgment of the Court, the intent to defraud, associated with the commission of the crime of forgery, need not of necessity entail an intent to cause specific or other financial detriment to the complainant. It suffices if it is within the contemplation of the culprit to decei-

ve the complainant in a manner likely to cause financial or other loss or detriment to him.

(E) *Exhibit 7 - Effect of content - Whether an official document:*

Conviction of the appellant on counts 3 and 4 must be set aside, as invited by appellant, because of failure on the part of prosecution to prove that the document is an "official" document within the meaning of s.337 - Cap. 154. Moreover, the document was on its face worthless, transparently void, incapable of misleading anyone as to its effect. Therefore, appellant is entitled to an acquittal.

Counsel for both sides argued the case before us ably and well and, still more important, in a spirit of fairness propitious to justice. That we shall not reproduce the arguments advanced in full, is no reflection of their value or the effort made to help the Court. Also, we must note the painstaking effort of the trial Court to keep the scales of justice even throughout the trial and the strenuous exertion to sift and analyse the evidence in a manner worthy of praise. We shall proceed to resolve the appeal, taking the points raised in the order elicited above.

(A) *Statement of appellant to police - Unconstitutional action - Implications - Likelihood of prejudice from disclosure of content of statement to the trial Court.*

Mr. Cacoyannis vigorously argued for the appellant that "prosecution" in the context of Article 83.2 connotes a unitary and indivisible process inamenable to severance into distinct or distinguishable parts. Misinitiation of the process tainted with invalidity not only the first but every subsequent step in the chain of prosecution of the appellant. If I can depict the submission of learned counsel in figurative terms, it is to this effect: "The rope is unbreakable" (the prosecution process), "notwithstanding a series of tight knots". The subsequent leave of the Supreme Court for the Court prosecution of the appellant, could not remedy the initial defect or validate subsequent steps. As a matter of fact, the attention of the Supreme Court was not specifically drawn, at the stage of giving leave for the prosecution of the appellant before the Court, to failure or omission of the prosecuting authorities to secure leave of the Court for questioning the appellant. Nor were the repercussions of such failure explored (see, *In Re Georghiou*, supra).

Drawing on English caselaw and making a comparison with criminal proceedings instituted without observance of procedural prerequisites, counsel argued that the intitial irregularity tainted the proceedings in much the same way and rendered them equally liable to be set aside (see, *R. v. Thompson*, 61 Cr. App. Rep., 108). We are not here faced, he suggested, with a mistrial, but with an abortive trial leaving no noticeable effects. The distinction between a mistrial and a null trial was indicated in appropriate terms in *Crane v. D.P.P.* [1921] All E.R. Rep. 19. Where the proceedings amount to a nullity the trial operates in a limbo and leaves a vacuum of voidness (see, *R. v. Rose And Others* [1982] 2 All E.R. 731 (HL)). We were asked to hold that only a resumption of the investigatory process assumed after proper authorisation by the Supreme Court, in case a cautionary statement is contemplated, can validly set in motion the machinery for the prosecution of a Representative and result in a valid conviction in law. However, quashing the conviction is not the only alternative. Our attention was drawn to English cases, suggesting that even in nullity proceedings the Court has a discretion to direct the entry of a verdict of acquittal exercisable in the interests of justice (see, *R. v. Gee And Others* [1936] 2 All E.R. 89; *D.P.P. of Jamaica v. White* [1977] 3 All E.R. 1003 (PC)).

Mr. Loucaides for the Republic submitted that none of the cases cited by his counterpart have a bearing on the issues at hand. They all turn on the implications of failure of the prosecution to follow prescribed procedural steps essential in law for a valid prosecution. In Greece, a distinction is made between Court prosecution and action prejudicial to a Parliamentarian. In the suggestion of learned counsel, this differentiation supports the proposition that the concept of prosecution is not indivisible (see, *Complement to Jurisprudence by Zacharopoulos* 1953-60, Vol. 2, para. 38). French legal practice bearing on the lifting of the immunity of a Parliamentarian, on the other hand, as portrayed in *Encyclopaedie Dalloz Droit Penal II D-I (immunite)*, p.5, para.65, supports the proposistion that the prosecution of a Parliamentarian may consist of a series of steps independent the one from the other.

The issue we are required to resolve in these proceedings, as adumbrated above, is one peculiarly associated with the inter-

pretation of the provisions of Article 83 of the Constitution, its objects and purposes. Examination of para.2 in particular, of Article 83, indicates that the makers of the Constitution drew a distinction between a Court prosecution and preliminary acts associated with the investigation of the case. Consequently, they specifically postulated that for the arrest and detention of a Parliamentarian, the prior leave of the Supreme Court was necessary. Arrest as well as detention, may properly be regarded as preliminary to a prosecution under the Criminal Procedure Law. As a matter of interpretation of the provisions of Article 83.2, it cannot be validly argued that authorisation by the Supreme Court of either the arrest or detention of a Parliamentarian is by itself authority for his prosecution under Cap. 155. To our mind, the wording, purport and effect of para.2 of Article 83, suggest that the constitutional legislators envisaged the leave of the Supreme Court for every confrontational step directed against a Parliamentarian. Although we are constrained by authority to construe the word "prosecution" as encompassing a composite process, not restricted to a prosecution under Cap.155, it is indeed improbable that the drafters of the Constitution intended to attach to investigatory steps, like obtaining a statement under caution, any consequences different from more drastic preliminary steps, such as arrest and detention. Nor can we subscribe to the argument that leave for taking specific steps in the investigation of a crime, tending to implicate a Parliamentarian, is, or can by itself, be authority for his prosecution under Cap.155. The object of the Constitution is to establish effective safeguards against every act tending to compromise the immunity of a Parliamentarian and detract him from the exercise of the duties pertaining to his office.

The decision of the Supreme Court *In Re Georghiou*, supra, establishes the range of matters that must be examined in order to decide whether to sanction a Court prosecution. The examination includes scrutiny of every preliminary act, as well as a host of other things. Of especial relevance is the nature of the charges intended to be preferred and the motivation of the prosecuting authorities in instituting proceedings against a Representative. Evidently, a Court prosecution cannot be authorised before the completion of the investigation into the case and the emergence of the charges warranted by the evidence in the hands of the police. Consequently, the sanctioning of any preliminary

step for the investigation of a case against a Parliamentarian, cannot by itself constitute authority for his prosecution before the Court. It is a separate matter, severable from the ultimate step of leave to sanction a Court prosecution, though relevant to the extent that breach of the provisions of Article 83.2 may have a bearing on the sanction of a prosecution under Cap.155. Its relevance lay mostly in the degree to which unconstitutional action compromises parliamentary immunity and colours the process of investigation. If evidence in the hands of the prosecution stems from unconstitutional action, it may be ignored. Disregarding such evidence may justify withholding leave because of manifest lack of evidence to support a charge.

It is a fact that the Supreme Court was not alerted before giving leave for the prosecution of the appellant to the unconstitutional action of the police. Nevertheless, we can safely conclude that such disclosure would have made no difference to the decision of the Supreme Court having regard to what was stated *In Re Georghiou*, supra, and, in particular, the overwhelming evidence in the hands of the police, tending to incriminate the appellant.

Consequently, the unconstitutional action of the police in no way rendered abortive the sanctioning by the Supreme Court of the prosecution of the appellant under Cap. 155.

The fate of evidence stemming from breach of a citizen's constitutional rights, was debated by the Full Bench of the Supreme Court in *Police v. Georghiades* (1983) 2 C.L.R. 33. Such evidence is totally inadmissible, as well as any other evidence deriving therefrom. There is no discretion to admit it. In *Georghiades*, supra, the Court was concerned with infringement of fundamental rights defined by Part II of the Constitution. It applies with equal force to rights conferred by Article 83. Subject to the doctrine of necessity, departure from constitutional order cannot be sustained. As in the case of *Georghiades*, evidence obtained in breach of the provisions of the Constitution must be excluded, as well as any evidence arising therefrom. This is what the Assize Court purported to do in this case. In the submission of Mr. Cacoyannis, the possibility of prejudice to the appellant from having the inadmissible statement for so long before the Assize Court, cannot be ruled out. He referred us

to *Pilavakis v. The Queen*, 19 C.L.R. 163, where the opening by the prosecution of an inadmissible statement before the Assize Court was held to be an irregularity albeit one that did not cause a substantial miscarriage of justice. The case is instructive in two other respects, as well. The Supreme Court expressed the view that Judges of the Assize Court, on account of their training, experience and impartiality can be confidently expected to find their verdict on evidence alone and, secondly, in drawing attention to noticeable differences between trial before a judge and jury and trial before a bench of professional judges. Another decision cited in support of the submission that appellant must have been inevitably prejudiced by the production of the statement before the Assize Court, was that of *Nestoros v. Republic*, 1961 C.L.R. 217. The relevance of this decision should primarily be confined to its facts, as stated in a subsequent decision of the Full Bench of the Supreme Court namely, *Vrakas And Another v. The Republic* (1973) 2 C.L.R. 139. *Nestoros*, supra, did not lay down any hard and fast rule that misreception of evidence irrespective of its effect upon the judgment and verdict of the Court, must inevitably lead to quashing the verdict of the trial Court. The irregularity, if any, as Triantafyllides P., pointed out in *Vrakas*, supra, giving the unanimous decision of the Full Bench, must be reflected in the judgment of the Court in order to justify our intervention.

Our attention was directed by Mr. Cacoyannis to a passage in the judgment of the Court appearing at p. 309 of the record, reproducing a version of events exclusively deriving from the inadmissible statement, as contended on behalf of the appellant. The relevant extract in the judgment of the Court referred to the version of the appellant about the representations he admitted making to the representatives of Mrs. Savva. Such representations were to the effect that he would dispatch the money to Mrs. Savva in England, not that he had sent it. As Mr. Loucaides correctly pointed out, there was ample evidence before the Court, separate and independent from his inadmissible statement, giving rise to the version of the appellant, recounted by the Court at the aforementioned part of its judgment.

Having carefully gone through the record, we see no reason whatever to doubt that the Assize Court found their verdict

on admissible evidence and excluded from consideration the statement rejected as inadmissible. Not only there was evidence supporting the findings of the Court, but such evidence was indicated in the judgment of the Court and evaluated in a most comprehensive way. There is nothing before us to suggest that any use whatever had been made of the inadmissible evidence and, far less still that, any reliance was placed upon it by the trial Court.

Appellant also contends he suffered prejudice from the production of the inadmissible statement before the Assize Court because its presence, in fact its making, limited his freedom in the preparation of his defence. Prejudice arose, we were told, because he felt constrained to prepare his defence along the lines plotted in the inadmissible statement. The risk of prejudice founded on this score, was refuted by Mr. Loucaides. Relying on the authority in *R. v. Norfolk*, Quarter Session [1953] 1 All E.R. 346, he submitted that once an inadmissible statement is excluded from consideration, its featuring in evidence at any stage can have no adverse repercussions upon the defence of the accused. In *R. v. Norfolk*, it was decided that an inadmissible statement coming from an incompetent witness did not vitiate committal for trial. We enquired of counsel whether the making of an inadmissible statement has ever been held, apart from the question of its admissibility, to have had any other repercussions upon the trial, particularly the defence of the appellant. Mr. Cacoyannis relied on the decision in *Pilavakis*, supra, earlier examined. Neither counsel nor our researches brought to light any decision supporting the proposition that the making of an inadmissible statement has, apart from questions relevant to its admissibility, any bearing on the right of the accused to defend himself by reducing his freedom to choose his defence. What the authorities appear to establish, is that once an inadmissible statement is properly excluded from consideration, the outcome of the proceedings remains unaffected. Any other approach would inevitably put in jeopardy the entire criminal process, whenever accused made an inadmissible statement. If that were the law, it would come close to acknowledging to the accused freedom to manoeuvre with the advancement of a defence in a manner encompassing freedom to fabricate a defence. An accused person may choose in exercise of his rights, to remain silent.

In the absence of improper pressure, there is no excuse for advancing any version of events that does not derive from the truth. The submission of appellant in this respect diminishes in force to the point of extinction, in the absence of any suggestion that pressure was exerted upon him, at any stage, to make a statement.

In the light of the above, the appeal, resting on the grounds enumerated under the headings examined, fails.

(B) *Summary offences—Power to commit for trial to the Assize Court*:

The offences, subject matter of counts 1 and 2, are crimes punishable under the Criminal Code with a maximum of three years' imprisonment (see, sections 335 and 339—Cap. 154), and so, amenable to the summary jurisdiction of the District Court (see, s.24(1)—Law 14/60). The law makes a distinction between summary and indictable offences. The competence of a Judge of the District Court to try criminal cases, is restricted to offences carrying a maximum of three years' imprisonment, subject always to the territorial limitations of his jurisdiction (see, s.24(1) and s.23 of the Courts of Justice Law—14/60). Exceptionally, the competence of a single Judge is extended, with the sanction of the Attorney-General, to the trial of offences punishable with up to seven years' imprisonment and of crimes remitted for summary trial (see, s.24.2)—Law 14/60, and s.155(b) —Criminal Procedure Law). Enlargement of competence leaves the sentencing powers of a single Judge unaffected (see, proviso to s.24(2)—Law 14/60). In *Hinis* v. *The Police* (1963) 1 C.L.R. 14, the High Court considered the relationship between the provisions of the Criminal Procedure Law—Cap. 155, and those of the Courts of Justice Law 14/60. The former statute, it was held, is a special enactment regulating the exercise of the jurisdiction vested in the Courts by Law 14/60. Therefore, its provisions survived the enactment of Law 14/60, except to any extent they are inconsistent with or repugnant to specific provisions of Law 14/60. It is in this spirit that the provisions of Cap. 155 must be construed and applied respecting the exercise of the criminal jurisdiction of a District Court. Subject to exceptions expressly provided for—an example being the provisions of s.90 of Cap. 155—summary offences are exclusively amenable to the jurisdiction of the District Court. There is

no power to inquire into their commission by means of a preliminary inquiry, or to put on trial a person accused of a summary offence before the Assize Court; notwithstanding the competence of the Assize Court to take cognizance of every offence committed anywhere within the Republic. The assumption of the jurisdiction by the Assize Court, a jurisdiction defined by s.20—Law 14/60, is subject to and dependent upon the observance of procedural prerequisites envisaged by the Criminal Procedure Law, principally, those laid down in s.92. Examination of the wording of s.92, read in isolation from the remaining provisions of Cap. 155, supports the view that a preliminary inquiry into a case is only possible where— (a) the offence is punishable with more than three years' imprisonment and (b) where the Court is of opinion that the offence, notwithstanding its summary nature, a proposition doubted by counsel for the appellant, is suitable for trial on information.

Under the provisions of Cap. 155, committal for trial is not the only prerequisite for the exercise of jurisdiction by the Assize Court. It is the filing of an information by the Attorney-General that initiates proceedings before the Assize Court (see, s.107—Cap. 155). The information may include any offence which, in the opinion of the Attorney-General, is disclosed by the depositions (s.108—Cap. 155).

We were asked to rule that appellant's committal to the Assize Court on counts 1 and 2, grounded on the forgery of the receipt (exhibit 11), was irregular, rendering both the committal as well as the trial that followed, nugatory. Reliance was based on the decision in *Bannister* v. *Clarke*—Cox's Criminal Law *Cases, Vol. XXVI*, 1918-21, supporting the proposition that an irregular committal taints everything that follows, including the verdict. In this case, the proceedings were nugatory only in part, as regards counts 1 and 2 for, committal for trial is a divisible composite process. Committal for trial on more changes than one implies committal on each distinct charge (see, *R.* v. *Philips*, *R.* v. *Quayle* [1938] 3 All E.R. 674. Therefore, as counsel acknowledged, the irregularity in relation to the committal of the appellant on counts of simple forgery and uttering, left unaffected his committal on the remaining two counts.

In opposition to appellant's submission, Mr. Loucaides asked

the Court to rule that Law 42/74 specifically permits the committal of any accused person before the Assize Court on any charge whatever. Also, committal is possible under the provisions of Cap. 155 as well, in appropriate circumstances. Appellant's view of Law 42/74 is that its application is restricted to indictable offences. Simply, it obviated the need for holding a preliminary inquiry into cases where this was necessary under the Law. It did not alter the range of indictable offences and made no provision for the committal of persons accused of summary offences.

A literal reading of the provisions of s.3 of Law 42/74, tends to support the construction put upon it by Mr. Loucaides, in that, prima facie, it puts it in the power of the Attorney-General to put on trial before the Assize Court, subject to compliance with certain procedural steps, any person accused of any crime whatever. On the other hand, this may be regarded as a strange result, considering that the principal object of the legislature in enacting Law 42/74 was to simplify the procedure for the committal of accused persons for trial before the Assize Court. We find it unnecessary in these proceedings to express a concluded opinion on the ambit of Law 42/74 for on either view of its effect, it is permissible in law to commit a person for trial before the Assize Court for summary offences properly joined with indictable offences.

The joinder of offences and joinder of offenders is a legal expedient that makes possible joinder whenever it serves the interests of justice, either because of the nature of the offences and the connection between them, or the participation of a number of persons in their commission. Joinder is expressly stipulated for, in sections 40 and 41 of the Criminal Procedure Law—Cap. 155. The prerequisites for joinder are laid down therein. It is interesting to notice that s.41, providing for the joinder of offenders, expressly contemplates the possibility of joinder of persons accused of indictable as well as summary offences. Thus, under s.41(b), persons accused of different offences committed in the course of the same transaction, may be jointly tried irrespective of the nature of the offence committed by each one of the participants and the punishment provided by law for such offence. Moreover s.41(e) again contemplates the joinder of persons accused of summary as well as indictable

offences. Hence, persons accused of stealing, an offence punishable with three years' imprisonment under s.262—Cap. 154, may be jointly tried with persons charged with, for example, stealing by agent and falsification of accounts—offences punishable with seven years' imprisonment under sections 270 and 313 of Cap. 154, respectively. On the other hand, s. 40 does not make joinder dependent on the punishment provided by law for the offences joined therein.

Section 110 of the Criminal Procedure Law, makes, subject to necessary modifications, the provisions of sections 40 and applicable to trials on information. The relevant expression to which heed must be paid in this context, is "mutatis mutandis", meaning "with the necessary changes". The changes necessary in this respect are that the trial should be preceded by committal and the filing of an information. The procedure followed in *Constantinides* v. *R.* (1978) 2 C.L.R. 337, is consonant with our interpretation of the law. Also, the decision of the Court lends indirect support to the interpretation adopted hereinabove. In that case, as in the present, the accused was put on trial before the Assize Court, pursuant to the provisions of Law 42/74 on summary as well as indictable offences. One of the counts was for obtaining money by false pretences, an offence punishable with three years' imprisonment under s.298—Cap. 154. It is noticeable there was no demur from the defence to the procedure followed, whereas the Court although it examined in detail the compass of Law 42/74 and the procedure followed in the proceedings, noticed no irregularity in that regard.

In our judgment, the four charges were properly joined and committal thereupon to the Assize Court, and trial thereafter upon information filed by the Attorney-General founded on the summaries made available to the defence, was in no way irregular.

This ground of appeal fails.

(C) *The receipt of the Cyprus Popular Bank, exhibit 11—Its content—The evidence of witness Zourides—Declaring a witness hostile—Use and effect of the evidence of a hostile witness:*

Appellant admitted furnishing the representatives of Mrs. Savva with a receipt containing false particulars but denied

that the receipt was the one produced by the prosecution—exhibit 11—or that the receipt furnished contained all the particulars recorded in exhibit 11. The receipt given did not include any signature purporting to signify verification of receipt of the money by the Bank and, therefore, did not purport to evidence lodgement of the money with the Bank. In appellant's contention, the copy furnished to the complainants was identical in shape and content to exhibit 20, a second photostatic copy of the false document furnished to the representatives of Mrs. Savva, kept by the appellant for reasons best known to himself. The original wherefrom exhibit 20 was copied, was never produced. Briefly, appellant's case before the Assize Court was that although he fiddled with falsity, the document stopped short of representing that the money had been actually lodged with the Bank. If the version of events put forward by appellant is accepted, the inescapable inference is that either witness Charis or witness Christodoulou or someone else, while the document was in the custody of the police, altered, modified or reproduced the document by supplying a signature indicating receipt of the money by the Bank, in an effort to incriminate the appellant. As we observed in argument, at no stage of the trial was any suggestion along these lines made to any witness, into whose hands the document came. The absence of any suggestion of tampering with the document, did not relieve the prosecution of the duty to prove that exhibit 11 was in fact the document handed over to the representatives of Mrs. Savva. Any reasonable doubts about the provenance or identity of the document should go to the benefit of the appellant. If at the end of the day a question mark existed as to the identity and content of exhibit 11 in the manner outlined above, appellant would be entitled to an acquittal for, in the absence of a signature ascribed to a bank employee, the document would not tantamount to one purporting to be something other than it was. No forgery is committed unless the document tells a lie about itself. This proposition is generally sound in law and is reflected in the definition of "forgery" in *R.* v. *Ritson* [1869] L.R. 1 C.L.R. 200, defining the crime as the fraudulent making of an instrument which purports to be that which it is not.

In the contention of Mr. Christophides, who comprehensively argued this aspect of the appeal, doubts about the identity of exhibit 11 arose from the evidence of prosecution witness

Zourides, whose description of the document tallied with exhibit 20 rather than exhibit 11. Moreover, his recollection of the particulars of the document produced before him, again left gaps in the case of the prosecution as to the content of the document furnished by appellant. The rejection by the trial Court of his evidence is interwoven with a gross irregularity in the production of his evidence in Court, stemming from the faulty exercise of the Court's discretion to allow his treatment as a hostile witness and, subsequent cross-examination in response to a belated application of the prosecution made after cross-examination of the witness by counsel for the appellant. Mr. Loucaides gave an explanation of his delay associated with a wish on his part to elicit certain details with regard to the statement of Zourides to the police before applying to have him cross-examined. As soon as the background to his statement was clarified, application was made to the Court to treat him as hostile. Counsel for the appellant laid stress on the decision of *R.* v. *Pestano and Others* [1981] Crim. Law Review, 397, where the English Court of Appeal subscribed to the view that application for the declaration of a witness as hostile, must be made simultaneously with the manifestation of unmistakeable signs of hostility on the part of the witness. The short report of the case does not disclose whether the Court intended to lay down an inflexible rule or a general rule of practice allowing departure in the interests of justice. Generally, procedural rules are designed to facilitate the pursuit of justice by eliciting, within reason and good sense, the truth in relation to a matter and the means adopted for its pursuit. Only in the face of stringent statutory provision should a Court of law attach to a rule of practice the force of law making impossible departure therefrom.

Whereas we support the proposition that it is proper practice to seek to confront a witness evincing signs of hostility at the first opportunity reasonably presenting itself, neither reasons of principle or precedent require us to elevate this into a rule of law. Failure to apply at the first opportunity to declare a witness hostile, does not deprive the Court of discretion to allow this course at a later stage. The contest at a criminal trial is about the ascertainment of truth subject to proper procedural safeguards. The days are long passed when form was as important, if not more important than the truth itself. Here, although

the better course would have been for Mr. Loucaides to indicate to the Court during the examination-in-chief of Mr. Zourides that he might apply, depending on the elicitation of certain facts, to have the witness declared hostile, his failure to do so did not deprive the Court of discretion to allow this course at a later stage. Neither the reasons for delay to apply for the declaration of the witness as hostile were fraught with any improper motives, nor was the Court deprived of discretion to declare him hostile at a later stage. The finding of the trial Court that there was inconsistency between the statement of the witness to the police and his evidence in Court, was perfectly warranted on a comparison of the two narratives. Their decision to declare him hostile cannot be faulted. The suggestion that the Court should restrict its examination to the content of the summary of the evidence of the witness and not extend it to the statement itself, cannot be sustained. The provisions of Law 42/74 are itended to simplify committal. They have no bearing on the subject of hostility of a witness. As to the prejudice, none was suffered for, the statement of the witness was made available to counsel for the appellant in time.

In accordance with the proviso to s. 5 of the Criminal Procedure Act 1865, the Court may make any use of the statement of a hostile witness for the purpose of evaluating his credibility and, generally, the weight to be attached to his evidence. The decision in *R.* v. *Birch*, 18 Criminal Appeal Reports 26, supports this interpretation of the law. In making this evaluation the trial Court is not confined to those parts of the statement read out in Court, but extends to every part of it. Of course, the content of a hostile witness' statement to the police does not constitute evidence in the cause; it merely furnishes material for the evaluation of the credibility of the witness.

The weight to be attached to the evidence of a hostile witness is a matter for the Court. There is no rule of law that it should be ignored in its entirety. Understandably, a Court of law will ordinarily be slow to attach any weight to the evidence of a hostile witness but may, if it seems proper to it do so, especially where parts of his evidence are supported by other evidence in the cause.

The Assize Court made a very detailed analysis of every aspect

of the case pertaining to the credibility and value of the testimony of witness Zourides, and properly directed itself regarding discrepancies that existed between the testimony of the two principal witnesses for the prosecution, namely, Mr. Charis and Mr. Christodoulou. They accepted them as witnesses of truth, attributing discrepancies in their testimony to lapses of inaccuracies of memory. Going through the record of the proceedings, we are of the view that they were perfectly entitled to arrive at this finding. As noted in their judgment, the appellant himself made representations that lent support to the contention of the aforementioned prosecution witnesses that the receipt furnished by the appellant contained the particulars recorded in exhibit 11, including the signature attributed to a bank employee (see, in particular, the assertions made in exhibit 4 and at the back of exhibit 8).

In our judgment, the finding of the Assize Court that exhibit 11 was the document furnished by the appellant and that it contained the particulars appearing therein, is properly founded on evidence before the Court. We see no reason whatever for interfering with it. Evidently, the receipt was furnished to the representatives of Mrs. Savva in order to disabuse them and Mrs. Savva of the adverse impression that he was not doing his duty and was not living upto his promises; and in that way perpetuate falsehood to his advantage. In our judgment, the findings of the trial Court with regard to exhibit 11, may properly be regarded as inescapable, having regard to the totality of the evidence before the Assize Court.

This part of the appeal fails as well.

(D) *The Concept of "intent to defraud" in the law of forgery:*

In the submission of Mr. Efstathiou who argued this aspect of the appeal, conviction on none of the four counts can be sustained because of lack of proof of an essential ingredient of the crime of forgery, viz. failure to prove the specific intent envisaged by s.331 of the Criminal Code. "Forgery" is defined as the making of a false document with intent to defraud. "Intent to defraud" is one of the two indispensable ingredients of the crime of forgery. Mr. Efstathiou argued that notwithstanding the classic analysis made by the Assize Court, of the

subjective nature of "intent" and the manner of proof of this element, the trial Court misdirected itself as to the nature of the intent necessary to support the commission of the crime of forgery. "Intent to defraud" in connection with the crime of forgery, connotes an intent to inflict, by means of deception, financial injury to a specific person. The existence of this intent is specifically negatived by the findings of the Assize Court that, financial injury to Mrs. Savva as such, was not within the contemplation of the appellant, although she stood to suffer injury from the action of appellant.

Guided by the exposition of the law on the requisites of "intent to defraud", made by the House of Lords in *Welham* v. *D.P.P.* [1960] 1 All E.R. 805, the Assize Court held that "intent to defraud", in the context of s.331, does not entail the existence of an intent to injure a specific person. Moreover, injury is not confined to a financial one. The crime of forgery is proved if the deception practised by means of the false document, is capable of inducing anyone person, not a specific person, to act to his detriment, not necessarily of a financial kind. In *Welham*, supra, the House debated at length the implications of "intent to defraud" and laid emphasis on the distinction between "intent to deceive" and "intent to defraud". As explained by *Lord Denning* in particular, neither at common law nor under the Forgery Act was "intent to defraud" associated with the causation of financial injury, by means of the deception practised, to any particular person. As the learned Judge put it, "someone in general will suffice" (see, p. 815, H—I). Again, injury is not confined to economic loss "not to the idea of depriving someone of something of value". The likelihood of prejudice, as explained therein, is sufficient. From the decision in *R.* v. *Peter Martin*, English Reports 168, 1353, drawn to our attention by Mr. Loucaides, it appears that the common law never required proof of an intention to injure a particular person or envisaged injury of a financial kind. The conviction of an employee who forged a receipt with a view to deceiving his employer that money which he had obtained from him had been applied for the purpose it was given, was valid in law (see, also, *R.* v. *Hill*, 173 English Reports 492). The analysis of the law made in *Welham*, supra, on the subject of intent to defraud, is supported by powerful dicta expressed in subsequent decisions of the House of Lords (see, *Scott* v. *Comr. of Police*

[1974] 3 All E.R. 1032; and *A-G's Reference (No. 1 of 1981)* [1982] 2 All E.R. 417). In *R. v. Allsop*, 64 Crim. App. Rep., 29, an attempt was made to explore the intrinsic nature of criminal intent required for the commission of the crime of forgery. The object of forgerers is, generally, it was observed, to benefit themselves; injury to their victims is of secondary importance. To our mind the principal object of forgerers possessed of the requisite criminal intent, is to alter a picture of things to their advantage. If, by virtue of this deception, another person is induced to act to his detriment, as earlier defined, then the crime of forgery is committed.

The statutory presumption as to the existence of an intent to defraud, established by s.334—Cap. 154, throws ample light on the concept of "intent to defraud" in the context of the crime of forgery, defined by s.331. Intent to defraud is presumed to exist whenever at the time the false document made "there was in existence a specific person, ascertained or unascertained, capable of being defrauded thereby". The presumption is not rebutted, as provided in s.334, by proof that the forgerer took measures to prevent such persons being defrauded. Section 334 clearly suggests that the concept of "intent to defraud", in the context of the definition of "forgery", is identical to the concept of "intent to defraud" under English law on the subject of forgery. Consequently, the Assize Court rightly sought guidance from English caselaw, particularly the case of *Welham*, supra. The trial Court correctly directed itself on the nature of the intent necessary to sustain the crime of forgery, whereas their findings were perfectly open to them.

We dismiss this part of the appeal as well.

(E) *False documents capable of laying the foundations of a forgery charge—Official document—Definition—Meaning of "official document" in s. 337:*

Three separate grounds were pressed, each one justifying, in the submission of counsel for appellant, the quashing of the conviction on counts 3 and 4 arising from the making and uttering of exhibit 7, the document attributed to the Central Bank of Cyprus. The first is a factual one. It questions the finding of the trial Court that exhibit 7 was given at any time prior to the delivery of the cheque refunding the monies to Mrs.

Savva. The conflict between the two prosecution witnesses on the subject, makes the finding of the trial Court unsafe. Mr. Charis maintained in evidence that exhibit 7 was handed over together with the cheque, whereas Mr. Christodoulou testified it was given earlier. We fail to see how overruling the finding of the trial Court in this area can have any consequences upon the conviction of appellant on counts 3 and 4. The document was false and was given to the representatives of Mrs. Savva in order to induce them to believe that he had taken necessary steps for the remission of the money abroad. The pertinent question here, as elsewhere, is whether the false document was prepared and uttered with intent to defraud. Whether it was given at the time of repayment of the money, or earlier, the crimes would be committed so long as the appellant intended, by means of propounding the false document in question, to induce them to believe that he had carried out his duties to Mrs. Savva. Appellant had repeatedly represented he had secured permission for the remission of the money abroad. This document was designed to induce them to believe he had taken proper steps in the discharge of his duties in a way likely to cause Mrs. Savva to act to her detriment.

In a well reasoned extract of their judgment, the Assize Court dealt with the evidence bearing on the time of delivery of exhibit 7, noticed the discrepancies between the testimony of Mr. Charis and Mr. Christodoulou and summed up the evidence on the subject, most adequately, including the repeated representations of the appellant that permission from the Central Bank had been secured. There would be no sense, they observed, in appellant giving exhibit 7 at the time of delivery of the cheque. There is no room for interfering with their findings. On the contrary, they are most persuasive having regard to the evidence before them and the complexion of the case as a whole.

The second ground is that exhibit 7 could not, under any circumstances, having regard to its content, support a charge of forgery. It could not deceive anyone. It was, in their contention, manifestly void. At common law it was no forgery unless the forged document was of apparent legal effect (see, *Wall*, 1800 2 East PC, 923). This has been changed. The present rule evolved under the Forgery Act does not postulate

an apparent legal effect as a prerequisite to the commission of the crime. As the trial Court correctly noted, citing from *Russel on Crime*, 11th ed., p. 1421, if the similarities between the false document and what it purports to represent are such as to be capable of deceiving persons of ordinary observation, the crime of forgery is committed (see, also, *Halsbury's Laws of England*, 4th ed., Vol. 2, para. 1324 et seq.). The same rule is reflected in s.333—Cap. 154, defining falsity in the context of forgery. Under para.(a) of s.333, a person is deemed to make a false document if he "makes a document purporting to be what in fact it is not". Exhibit 7 was a document styled as emanating from the Central Bank and purported to regulate a matter within the sphere of authority of the Bank. The trial Court found as a fact, on a consideration of the document and its content as a whole that, it was capable of deceiving persons of ordinary observation and, in fact, did deceive the representatives of Mrs. Savva who regarded it as genuine. The trial Court reminded that the test was not the reaction of persons possessed of specialised knowledge in matters dealt with by exhibit 7, but persons of ordinary observation. Here, again, we fail to see any error or misdirection on the part of the trial Court. And, we also dismiss this part of the appeal.

The third ground centres on the status of the Central Bank and the nature of the documents issued by the Bank, viewed in relation to the definition of "official" in the context of s.337 —Cap. 154. It can be properly divided into two parts. The first affecting the status of the Central Bank and the second the nature of the documents that qualify as official under the aforementioned section of the law.

It was urged that documents of the Central Bank do not have the attributes of official documents and by this logic we were invited to hold that documents fabricated in the name of the Central Bank cannot constitute forged official documents. Emphasis was laid on the decision of *Trendtex Trading Corpn. v. Central Bank* [1977] 1 All E.R. 881, turning on the status of the Nigerian Central Bank and its claim to immunity from law suits, made on the basis that it was on pari-pasu with a Department of State. It was held that the Bank did not qualify for immunity notwithstanding its establishment and regulation of its function by statute, mainly because of the nature of its

activities. The decision rested on the peculiar circumstances pertaining to the Nigerian Central Bank and its engagement in trade. It did not lay down any general rule that Central Banks cannot qualify as Departments of State. Mr. Loucaides submitted that the decisions in *Mellenger And Another* v. *New Brunswick Development Corpn.* [1971] 2 All E.R. 593, is of greater relevance and assistance to the question in hand. The crucial question in determining the status of a corporation, is whether it is in the same position as a government department.

Now, the status of the Central Bank of Cyprus. Before answering the question whether documents of the Central Bank can be regarded as official, it is opportune to explore the meaning of "official" in the context of s.337. The law itself supplies no definition of the word "official". From what counsel told us and the research we carried out on the subject, there is no authoritative interpretation of "official" for the purposes of s.337. It is not an easy word to define, as the Supreme Court observed in *Kyriakides* v. *Palmer*, 16 C.L.R. 17. *Crean, C.J.*, acknowledged as much in the above case. In his view, "official" is something "pertaining to an office or post". The other member of the Supreme Court, *Williams, J.*, favoured a stricter test and inclined, as I comprehend his judgment, to favour a test tying "official" both to the office wherefrom the document emanates, as well as the object it seeks to accomplish. Only if the document is issued in the exercise of powers vested in that office by law, or in discharge of the functions ordinarily performed by it, can the document classify as official. Counsel made in their addresses reference to the definition of the word "official" given in a number of dictionaries and ordinary and legal lexicons that we had occasion to consider.

It is our considered view that "official document", in the context of s.337, is a document that has the imprint of State authority and is issued in the course of or in the exercise of functions pertaining to that office's sphere of authority. The Constitution provides for the establishment of an issuing bank that may be turned into a *Central Bank* (see, *Articles* 118 and 121 *of the Constitution*). Such Bank shall not be in accordance with para. 2 of Article 118 under any Ministry. It comes under Part VI of the Constitution, grouping independent institutions

of the State. It is a constitutional organ of high importance. The Governor and Deputy Governor of the Bank are, by virtue of Article 119, independent officers of the Republic with responsibility for the currency laws of the Republic. *The Central Bank of Cyprus Law—Law* 48/63—providing for the establishment of a Central Bank, is, on a consideration of its provisions and preamble thereto, a statute designed to implement the provisions of the Constitution (see, *Article* 118 *to Article* 121). The Central Bank is entrusted with the formulation and execution of monetary and credit policy and, generally, assigned a dominant role in matters of monetary and financial policy. It performs functions that at common law are assigned to the State by virtue of the Crown prerogative (see, *Halsbury's Laws of England*, 4th ed., Vol. 8, para. 1018). As in Cyprus, the exercise of this power of the State is regulated by statute. The Central Bank is constitutionally sanctioned for the transaction and discharge of important affairs of the State. Documents issuing from the Bank in the exercise or discharge of its powers are properly classified as official documents. Lastly, attention must be focussed on the meaning of "forgery" within s.337 and its relationship to "official". Although "forgery" is not defined, it is unlikely that the legislature intended this word to have a meaning different from "forgery", as defined in sections 331, 332 and 333. Section 337 is encountered in that part of the Criminal Code that deals with forgery and related offences. It is reasonable to presume that having supplied the definition of "forgery", the word "forgery", with its grammatical variatons, was used in that sense thereafter. This much is clear to us. Construing the word "forgery" in this sense, s.337 could be interpreted as reading that anybody who makes a false official document, in the sense of s.333, with intent to defraud, commits the offences set out therein. We debated at length whether the offence is confined to the alteration of essential particulars of a document that is properly official in the sense earlier explained. A negative answer must be given to that question because of the underlying concept of "forgery" embodied in s.333. "Forgery" is nowhere confined to the alteration of the particulars of a genuine document. Such alterations may amount to the crime of forgery in accordance with paragraphs (b) and (c) of s.333, but it is not the only conduct prohibited by s.333. The fabrication of a document in its entirety, is equally offensive under para. (a) of s.333. There

is nothing in s.337 suggesting it was intended to confine falsity in relation to "official" to any of the categories of falsity enumerated in s.333. Consequently, the crime is committed whenever a document is fabricated in its entirety and purports to be official, provided always that it is apt, because of its content, to deceive persons of ordinary observation, as indicated earlier in this judgment.

It is in this spirit, though not as explicitly, that the Assize Court approached the definition of the crime in s.337. We find no misdirection in law whatever, nor is there any room for disturbing their finding that exhibit 7 was a forged official document.

This part of the appeal fails as well and, with it, the appeal against conviction in its entirety.

SENTENCE

The appellant was convicted on concurrent sentences of one year's imprisonment. It was strenuously argued by Mr. Triantafyllides on behalf of the appellant that the sentence is excessive.

We have anxiously examined the sentence imposed from every angle. Certainly, it was right in principle and warranted by the grave facts of the case, made all the more serious because of the identity of the appellant, a lawyer, pledged as every lawyer, to defend the law and, a Member of the House of Representetives, entrusted by the people with one of the highest offices of the State.

It has been said time and again and, now we repeat, that the higher one stands, the higher becomes his duty to observe the law; in fact, give by his conduct an example of obedience to the law.

On the other hand, we cannot overlook that the sentence of imprisonment is not the only punishment of appellant. He forfeited his seat as a Member of the House of Representatives—no small punishment by any measure—whereas his law practice, the means of support of himself and his family, was shattered, no mean punishment either. Faced with this human tragedy, we decided, not without reluctance, to temper justice, that justifies a sentence of one year's imprisonment in

the interests of law enforcement, with mercy—that judicial power that enables the Court to adjust punishment to the human dimension and intrinsic complexion of a case.

The sentence is reduced on each count to six months' imprisonment, to run concurrently.

In the result, the appeal against conviction is dismissed. The appeal against sentence is allowed. The sentence is reduced to six months' imprisonment.

LORIS J.: I am in full agreement with the judgment of brother Judge Pikis.

TRIANTAFYLLIDES P.: I am in agreement with the outcome of these appeals as it is stated in the judgment just delivered by my brother Judge Mr. Justice Pikis but I have to explain in this separate concurring judgment of mine how, on some issues, I have reached certain conclusions by an approach somewhat different than his:

First, I cannot agree fully with the way in which Article 83 of the Constitution has been construed in the judgment of Pikis J.

It is useful to quote verbatim the text of paragraph 2 of such Article, which reads as follows:

"2. Ὁ βουλευτὴς δὲν δύναται ἄνευ ἀδείας τοῦ Ἀνωτάτου Δικαστηρίου νὰ διωχθῇ, συλληφθῇ ἢ φυλακισθῇ ἐφ' ὅσον χρόνον ἐξακολουθεῖ νὰ εἶναι βουλευτὴς.

Τοιαύτη ἄδεια δὲν ἀπαιτεῖται ἐπὶ ἀδικήματος ἐπισύροντος ποινὴν θανάτου ἢ φυλακίσεως πέντε ἐτῶν καὶ ἄνω, ἐφ' ὅσον ὁ ἀδικοπραγήσας κατελήφθη ἐπ' αὐτοφώρῳ. Εἰς τὴν περίπτωσιν ταύτην τὸ Ἀνώτατον Δικαστήριον εἰδοποιούμενον παρευθὺς ὑπὸ τῆς ἁρμοδίας ἀρχῆς ἀποφασίζει ἐπὶ τῆς παροχῆς ἢ μὴ τῆς ἀδείας συνεχίσεως τῆς διώξεως ἢ τῆς κρατήσεως, ἐφ' ὅσον χρόνον ὁ ἀδικοπραγήσας ἐξακολουθεῖ νὰ εἶναι βουλευτής".

("2. A Representative cannot, without the leave of the High Court, be prosecuted, arrested or imprisoned so long as he continues to be a Representative. Such leave is not required in the case of an offence punishable with

death or imprisonment for five years or more in case the offender is taken in the act. In such a case the High Court being notified forthwith by the competent authority decides whether it should grant or refuse leave for the continuation of the prosecution or detention so long as he continues to be a Representative").

Even though I am prepared, as at present advised, to accept that the leave of the Supreme Court which is required under paragraph 2, above, may be granted, in a proper case, by reference to particular stages of a "prosecution" ("δίωξις"), I cannot agree that this should invariably be so. I am of the opinion that, depending on the material which may be placed right from the beginning before this Court when such leave is sought, it is conceivable that leave to prosecute, in the sense of Article 83.2, may be granted in a manner rendering constitutionally possible, without further leave of the Court, the taking of all consecutive steps leading from the obtaining of a statement under caution from a Member of the House of Representatives right up to his trial, without it being necessary to seek, once again, the leave of this Court at any subsequent stage.

On the other hand, I do recognize that there may be instances when this Court may find it fit, when it grants leave to obtain a statement as aforesaid, to limit such leave to the obtaining of the statement and, thus, render it necessary for the prosecution to seek the leave of this Court once again if it is, eventually, decided to file a charge against the Member of the House of Representatives concerned.

In the present instance leave was granted, under Article 83.2 above, to initiate criminal proceedings against the appellant, on the 23rd February 1983 (see *In Re Georghiou* (1983) 2 C.L.R. 1, 15), and such leave was granted in relation to the charges in respect of which the appellant was, eventually, tried and convicted.

Later on, on the 29th July 1983, it was held (see the majority opinion of this Court in determining Question of Law Reserved No. 192) that the taking by the police of a statement from the appellant under caution, on the 23rd November 1982, constituted "prosecution" ("δίωξιν") in the sense of Article 83 of the Constitution, in respect of which there was needed the

prior leave of this Court and that, therefore, such statement could not be used at the trial of the appellant against him. As a result, though such statement was initially admitted in evidence, it was, eventually, expunged from the record of the trial Court.

I am of the opinion that the leave to initiate criminal proceedings, which was granted on the 23rd February 1983 as aforesaid, was validly granted, notwithstanding the fact that previously to that the police had obtained from the appellant a statement under caution without the leave of this Court under Article 83.2 of the Constitution, because the stage at which leave to initiate criminal proceedings was granted is, indeed, clearly severable, in the circumstances of the present case, from the earlier stage at which a statement under caution was obtained from the appellant; especially as the unconstitutionality entailed by the obtaining of such statement was fully obliterated before the conclusion of the trial of the appellant when this statement was excluded from the evidence before the trial Court after this Court decided on 29th July 1983 that it could not be used against the appellant.

What has, however, given me, prima facie, cause for anxiety was the matter of whether the initial admission in evidence of the aforesaid statement and the fact that it remained part of the record of the trial of the appellant until the close of the case for the prosecution may have caused such prejudice to the appellant, in connection with the preparation and conduct of his defence as the accused, so as to lead me to the conclusion that his conviction should be set aside on this ground and a new trial should be ordered.

Though I should not be understood in the least as favouring the undue prolongation of criminal proceedings for an unreasonably lengthy period of time, I should, first, observe that when the legal issue of the impact on the validity of the trial of the appellant, because of the treatment as admissible evidence of the aforesaid statement during a considerable part of the trial, was raised by counsel for the appellant, before he was to make his defence, it might have been advisable for the trial Court, after it had pronounced on this issue on the 4th August 1983, to have referred, on its own motion, such issue to the Supreme Court for its opinion under section 148(1) of the Criminal Procedure Law, Cap. 155, so that both the appellant and the prosecution could

have known finally, at that stage, what were the consequences of the unconstitutional admission in evidence of the aforementioned statement until it was later excluded as unconstitutional. As, however, the aforesaid issue was not referred earlier to this Court under Article 148(1) it has to be decided now in this appeal.

I have weighed carefully all material considerations in this respect and have in the end reached the conclusion that this is not a proper case in which to order, in the interests of justice, the retrial of the appellant on this ground, because I am of the opinion that the fact that the statement in question of the appellant remained, at his trial, part of the record of the case against him until it was excluded therefrom at the close of the case for the prosecution, cannot be treated as having actually caused a substantial miscarriage of justice vitiating fatally the validity of the trial.

I shall deal, next, with the contention of counsel for the appellant that the trial was invalid in so far as counts 1 and 2 in the information are concerned, namely those relating to the alleged forging and uttering of a photocopy of a deposit receipt of the Cyprus Popular Bank Ltd., because the said offences were offences triable summarily and not on information and, therefore, the appellant could not be committed for trial by an Assize Court in respect of them together with the offences charged in counts 3 and 4, namely the alleged forging and uttering of a photocopy of a letter of the Central Bank of Cyprus, which were offences triable by an Assize Court.

I am of the view that section 92 of Cap. 155 has to be read in conjunction with sections 20(1) and 24 of the Courts of Justice Law, 1960 (Law 14/60).

The said section 92 reads as follows:

> "92. Whenever any charge has been brought against any person of an offence not triable summarily or as to which the Court is of opinion that it is not suitable to be disposed of by summary trial, a preliminary inquiry shall be held by a Judge in accordance with the provisions in sections 93 to 105 (inclusive) contained."

The material part of section 20(1) of Law 14/60 reads as follows:

"20.-(1) Subject to Article 156 of the Constitution every Assize Court shall have jurisdiction to try all offences punishable by the Criminal Code or any other Law and committed -

(a) within the Republic;

..."

Section 24 of Law 14/60 reads as follows:

"24.-(1) Every President of a District Court, every Senior District Judge and every District Judge shall have jurisdiction to try summarily all offences punishable with imprisonment for a term not exceeding three years or with a fine not exceeding two thousand pounds or with both and may, in addition to or in substitution for any such punishment, adjudge any person convicted before him to make compensation not exceeding two thousand pounds to any person injured by his offence.

(2) Notwithstanding anything in this section contained a President of a District Court, a Senior District Judge or a District Judge shall, with the consent of the Attorney-General of the Republic, have jurisdiction to try summarily any offence punishable with imprisonment for a term not exceeding seven years, if satisfied that it is expedient so to do, in all the circumstances of the case including consideration of the adequacy of the punishment or compensation such President of a District Court, Senior District Judge or District Judge is empowered under this section to impose or award:

Provided that any punishment imposed or any compensation awarded shall not exceed the punishment or compensation which a President of a District Court, a Senior District Judge or a District Judge, as the case may be, is empowered to impose or award under subsection (1)".

I have reached, in the light of the above legislative provisions, the conclusion that the Assize Court which tried the appellant had jurisdiction to try him in respect, also, of the offences for which he was charged by means of counts 1 and 2 in the information, even though such offences were offences which could be tried summarily by virtue of section 24 of Law 14/60; because I am of the opinion that section 24 does not detract from the

general overall jurisdiction of an Assize Court but it only makes provision that in certain instances an offence may be tried summarily and not by an Assize Court.

Also, though section 92 of Cap. 155 renders it obligatory to hold a preliminary inquiry in the situations specified therein it cannot be construed as going so far as to exclude the holding of a preliminary inquiry in case an offence, which can be tried summarily, is to be tried by an Assize Court, especially when such offence has been joined, on the strength of section 40 of Cap. 155, with other offences which are not triable summarily.

Actually, in the present case no preliminary inquiry was held at all because it was dispensed with under section 3 of the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74) and, consequently, the appellant was furnished with summaries of the statements of the witnesses who were going to testify against him in relation even to the two offences which were triable, as aforesaid, summarily; and it cannot, really, be said that he was, thus, in any way, prejudiced in relation to the preparation of his defence, because, on the contrary, he was facilitated in this respect by knowing in advance the evidence which was to be adduced against him in connection with the said two offences.

Another issue in relation to which I have not been able to agree fully with the approach adopted by Pikis J. in his judgment is the treatment of prosecution witness Zourides as a hostile witness:

I do agree that in the circumstances of the present case it was permissible for the trial Court to allow the recalling of the said witness so as to have an opportunity of deciding whether he should be treated as a witness hostile to the prosecution, but I am not prepared to treat this case as a precedent in the sense of laying down that in every criminal trial a witness called for the prosecution may be recalled later at any stage and be treated as hostile irrespective of the paramount consideration of ensuring a fair trial; because a trial may be rendered unfair if a prosecution witness is recalled in order to be treated as hostile at a stage at which the adoption of such course may result in disturbing the balance of the scales of justice in a manner which is unfair to the person who is being tried.

In the present instance it is clear that the said witness Zourides was recalled immediately after only another witness for the prosecution, whose evidence was more or less of a formal nature, had testified and, consequently, it cannot be said that the defence had been actually prejudiced by having been allowed to rely or act on the assumption that the evidence of Zourides, to the extent to which it was favourable to the defence, would continue to be regarded as the testimony of a witness who was not to be treated as hostile to the prosecution.

Lastly, I would like to make some observations regarding the manner in which the sentence was assessed by the trial Court in order to punish the appellant for his misdeeds:

I am of the opinion that the trial Court has relied unduly on the analogy with the case of *Stephanou* v. *The Police* (1972) 2 C.L.R. 114, in deciding what was the proper evaluation of the factor of the grave detriment to the career of the appellant as an advocate and as a politician.

The appellant in the *Stephanou* case was a school-teacher who had been sentenced to concurrent sentences of imprisonment for periods ranging from one year to six months after he had pleaded guilty to five counts charging him with forgery, two counts charging him with the uttering of false documents and two counts charging him with attempting to obtain money by false pretences. All those offences were committed in respect of winning numbers of State Lottery tickets and, before sentence was passed upon him, he applied that twenty-two other similar offences should be taken into consideration too; and it was held by this Court on appeal that the fact that the appellant had ruined his career was not a sufficient reason in that case for reducing the sentences which were imposed on him.

The present instance is a case where the appellant has committed, admittedly very serious offences, not repeatedly and with system as in the *Stephanou* case, supra, but in the course of one and the same transaction, in an obviously vain, patently transparent and naive effort to evade the consequences of his own lack of diligence; and there is no doubt that irrespectively of how leniently he might be treated for his more foolish rather than calculatedly criminal conduct when he is dealt with disciplinarily as an advocate, the damage done to his career and to his reputation is so immense and irreparable that much greater

weight ought to have been attributed to this factor by the trial Court, which seems to have mistakenly regarded the *Stephanou* case as a proper precedent for the purpose of assessing the sentence to be imposed on the appellant.

In the light of all the foregoing I agree that the appeal against conviction should be dismissed and the appeal against sentence should be allowed as stated in the judgment of my brother Judge Mr. Justice Pikis.

TRIANTAFYLLIDES P.: In the result the appeal against conviction is dismissed and the appeal against sentence is allowed.

Appeal against conviction dismissed. Appeal against sentence allowed.