1986 March 13

[A. LOIZOU, LORIS, PIKIS, JJ.]

CHARALAMBOS SAVVA "PAMBOS,"

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4690).

Criminal Procedure—The Criminal Procedure Law, Cap. 155, ss. 3, 54, 73, 74(1)(a) and 74(1)(b)—Submission of "no case" as per s. 74(1)(b)—Court bound to rule on the submission—No discretion to allow prosecution to reopen its case—Right of prosecution to adduce evidence governed by s. 74(1)(a)—The provisions of our law (s. 74(1)(b)) leave no room for the application of the law and rules of practice "for the time being in England" (s. 3).

Criminal Procedure—English Law and Procedure—When such law and procedure are relevant in Cyprus.

Words and Phrases: "Club" in sub-section 3 of s. 17A of the Cyprus Sports Organisation Law 41/69 as amended by Law 79/80, s. 2.

The appellant was convicted on five counts in connection with offences under s. 17A(1)(a) and 17A(1)(a)(b)(aa) of the Cyprus Sports Organisation Law 41/69 as amended by Law 79/80.

The appellant was charged by virtue of counts 2 and 3 with promising on 16.5.85 and 17.5.85 at Larnaca and by virtue of count 6 with having given £300.- to a certain Demetris Christofides a foot-ball player of "ETHNIKOS" Assias with the intention of altering in favour of "ORFEAS" Athienou the result of a foot-ball match to be held

on 19.5.85 between the aforesaid two clubs (σωματεία). By virtue of counts 4 and 5 the appellant was charged with having accepted £500.- from the members of the Committee of "ORFEAS" Athienou with a promise of altering in favour of "Orfeas" club the result of the same foot-ball match to be held between the aforesaid two clubs on 19.5.85.

The relevant for this case part of s. 17 (A) (3) of the said law reads as follows: "In this section 'club' means any legally constituted club or organisation in the Republic constituted for the purposes of promoting out of school physical training and athleticism in Cyprus generally and includes athletic associations".

After the close of the case for the prosecution counsel for the appellant submitted that no prima facie has been made out, because there was no evidence as to the "legal constitution" of the said two clubs and, therefore, an essential ingredient of the offence was missing.

At a certain stage of the address in reply of the prosecuting officer, the Court intervened and as shown from the record indicated to the prosecution that "the Court would consider useful further assistance from the prosecution" on the matter, and suggested "an opportunity for the prosecution to contact the office of the Attorney-General".

Upon this the Police Sergeant appearing for the prosecution applied for an adjournment with a view "to obtaining directions from the Legal Department in connection with the further handling of the case."

Eventually the case was adjourned to the 3.10.85, when Mr. Matsas, Legal Assistant, appeared together with the prosecuting Officer and applied for leave to re-open the case of the prosecution and adduce evidence as to the due registration of both the said clubs. He maintained that such evidence had not been called due to inadvertence and stated that the evidence was rather formal and of non-contentious nature.

The application was opposed by counsel for the appellant but the trial Judge gave the leave applied for.

Following this ruling counsel for the appellant applied for stating a case under s. 148(2) Cap. 155, but the trial Judge refused to do so. Counsel for the appellant then, invited the trial Judge to rule on his earlier submission that there was "no case". The trial Judge refused and proceeded to hear the fresh evidence adduced by the prosecution. As a result four more witnesses were called by the prosecution. After the adduction of this evidence the trial Judge did not call upon ex-accused 2, 3, and 4 to defend themselves; the appellant was not called upon to defend himself on count 1, but he was called upon to do so in respect of counts 2-6, on which he was ultimately found guilty.

Held, allowing the appeal, A. Loizou, J. dissenting A) Per Loris J.: (1) It is abundantly clear from the definition of "club" (σωματειον) in sub-section 3 of s. 17A of the Cyprus Sports Organisation Law, as amended, that for the purposes of this Law the "club" must be a legally constituted club or organisation in the Republic. There is no doubt whatever that the legal constitution of a club or organisation entails registration according to our Laws: whether such registration should be effected pursuant to the provisions of the Clubs Registration Law, Cap. 112, or the provisions of the Societies and Institutions Law (Law No. 57/72) it is immaterial; the fact remains that for their "legal constitution" registration is required.

Among the elements which the prosecution had a duty to aver and prove by evidence was undoubtedly the registration of the clubs in question. This element was not at all formal.

(2) The application for re-opening of the case of the prosecution was due to the intervention of the trial Judge when he remarked that "the Court will consider useful further assistance from the prosecution" and suggested "an opportunity of the prosecution to contact the office of the Attorney-General". The intervention, erroneous though it was, was motivated by the Judge's anxiety to see that justice is done.

(3) As it is abundantly clear from the provisions of s. 74(1)(b) of Cap. 155 the trial Judge was bound to give

his ruling on the submission of "no case" after the close of the case for the prosecution. In the circumstances, had he followed that course, he would have reached no other ruling than a ruling sustaining the submission.

(4) As there is a special provision in our law relating to the question in issue, the law and rules of practice relating to criminal procedure "for the time being in England" (Vide s. 3 of Cap. 155) are excluded.

(B) Per Pikis, J. (1) Our code of Criminal Procedure Law, Cap. 155—modelled on the common law adversarial system —reflects the complexion of English Law on the subject at the time of its codification. Notwithstanding codification, English Practice and Procedure are still relevant "as regards matters of criminal procedure for which there is no special provision in this law" (s. 3 of Cap. 155) and as an aid to interpretation of the provisions of Cap. 155 that have their counterpart in English Law. There is no warrant for the application of the English practice and procedure when in conflict with our statute, Cap. 155.

(2) The right of the prosecution to call evidence is regulated by s. 74(1)(a) and its duty to call its evidence at the stage indicated by the section is mandatory as denoted by the word "shall". The prosecution has no right to call evidence in support of a charge at any other stage, nor has the Court discretion to allow them to do so.

The prosecution can have no more than one chance to prove its case against the accused. They must complete their case as provided in s. 74(1)(a) by the close of the case for the prosecution. Thereafter the stage is set for the defence. If no prima facie case is made against the accused he is entitled to be acquitted. As it is clear from the plain wording of s. 74(1)(b) of Cap. 155 no discretion resides with the Court at that stage of the proceedings to allow the prosecution to reopen its case for any purpose whatever. English practice and procedure to the contrary, a recent development, can neither supplant nor override the plain provisions of our statute.

(4) The only provision that confers discretion on the

Court to call or recall witnesses at any stage of the proceedings is s. 54 of Cap. 155. The discretion thereunder belongs exclusively to the Court and any evidence adduced as a result is evidence introduced by the Court for the "just determination of the case". The power under s. 54 is independent and separate from the provisions of s. 74. Though the prosecution as well as the defence may alert the Court to the need for the reception of further evidence in the interest of justice, any decision of the Court under s. 54 must reflect the Judge's appreciation of the interest of justice in the particular case and any evidence adduced thereafter must be introduced at the initiative of the Court.

Appeal allowed.
Conviction quashed.

Cases referred to:

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

R. v. *Plymouth Justices* [1982] 2 All E.R. 175;

Reg. v. *Frost* (1839) 9 C. & P. 129;

R. v. *Pilcher*, 60 Cr. App. R. 1;

R. v. *Crippen* [1911] 5 Cr. App. R. 260;

R. v. *Abbot*, 3 Cr. App. R. 141;

R. v. *Tate* [1977] R.T.R. 17;

Piggott v. *Simms* [1972] Crim. L.R. 595;

Mathews v. *Morris* [1981] Crim. L.R. 495;

Middleton v. *Rowlett* [1954] 2 All E.R. 277;

Saunders v. *Johns* [1965] Crim. L.R. 49;

R. v. *McKenna* [1956] 40 Cr. App. Rep. 65;

Price v. *Humphreys* [1958] 2 Q.B. 353;

R. v. *Doran* [1972] 56 Cr. App. R. 429.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Charalambos Savva "Pambos" who was convicted on the 10th May, 1985 at the District Court of Larnaca (Criminal Case No. 6263/85) on five counts as regards offences contrary to section 17(A)(1)(a) and 17(A)(1)(a)(b)(aa) of the Cyprus Sports Organisation Law, 1969 (Law No. 41/68 as amended by Law No. 79/80) that is giving promises to offer a gift to an athlete and accepting a gift and was sentenced by G. Nicolaou, D.J. to concurrent terms of one year's imprisonment on each of counts 2 and 4 with no sentence being passed on the other counts.

K. Saveriades with *C. Saveriades*, for the appellant.

P. Matsas, for the respondents.

Cur. adv. vult.

A. Loizou J.: The first judgment will be given by Loris, J.; then Pikis, J. will follow with his judgment and finally I shall give my own judgment.

Loris J.- The present appeal is directed against the conviction and sentence of the appellant by a Judge of the District Court of Larnaca (G. Nicolaou, D.J.) in Larnaca Criminal Case No. 6263/85, on five counts in connection with offences under s. 17A (1) (a) and s. 17A (1) (a) (b) (aa) of the Cyprus Sports Organisation Law 41/69 as amended by Law 79/80.

The appellant (ex-accused 1) was originally charged on six counts (Counts 1 to 6); on the same charge sheet three more co-accused were jointly charged with similar offences in three separate counts; (Counts 7, 8 and 9).

The other co-accused were not called upon to defend themselves on their respective counts; the appellant was not called upon to defend himself on count 1 only; he was found guilty on the remaining five counts and was sentenced to 1 year's imprisonment on counts 2 and 4 (terms of imprisonment to run concurrently) whilst no sentence was passed upon him on counts 3, 5 and 6 in view of the connection of the facts of these latter counts with the facts of the two counts on which sentences were already passed.

The relevant part of section 2 of Law 79/80 which amended the original Law of the Cyprus Sports Organization (Law 41/69) by inserting thereto new section 17A reads as follows:

17Α - (1) Πᾶς ὅστις -

(α) ἀπαιτεῖ ἢ δέχεται οἱονδήποτε μὴ προσῆκον αὐτῷ δῶρον, παροχὴν ἢ ὠφέλημα οἱασδήποτε φύσεως ἢ ὑπόσχεσιν τούτων, ἐπὶ τῷ σκοπῷ ἢ ἐπὶ τῇ ὑποσχέσει τῆς ὑπὲρ ἢ κατά τινος σωματείου ἀλλοιώσεως τοῦ ἀποτελέσματος ἀγῶνος οἱουδήποτε ὁμαδικοῦ ἢ ἀτομικοῦ ἀθλήματος διεξαγομένου ἢ διεξαχθησομένου μεταξὺ σωματείων·

(β) προσφέρει δίδει ἢ ὑπόσχεται δῶρον, παροχὴν ἢ ὠφέλημα οἱασδήποτε φύσεως —

(αα) εἰς ἀθλητήν, οἰκεῖον ἢ συγγενῆ αὐτοῦ ἐπὶ τῷ σκοπῷ ἢ ἐπὶ τῇ λήψει ὑποσχέσεως ὡς ἀναφέρεται εἰς τὴν παράγραφον (α)·

(ββ) εἰς σωματεῖον ἢ τὸ διοικητικὸν συμβούλιον τούτου ἢ εἰς μέλος αὐτοῦ ἢ εἰς μέλος σωματείου ἢ εἰς ἀθλούμενον σωματείου πρὸς ἐπίτευξιν εὐνοϊκοῦ ἀποτελέσματος ὑπὲρ τοῦ σωματείου αὐτῶν καὶ εἰς βάρος τοῦ ἀντιπάλου ἢ τῶν ἀντιπάλων αὐτοῦ,

εἶναι ἔνοχος ἀδικήματος καὶ ὑπόκειται εἰς φυλάκισιν μὴ ὑπερβαίνουσαν τὰ δύο ἔτη ἢ εἰς χρηματικὴν ποινὴν μὴ ὑπερβαίνουσαν τὰς χιλίας λίρας, ἢ εἰς ἀμφοτέρας τὰς ποινὰς ταύτας.

Νοεῖται ὅτι οὐδὲν ἀδίκημα διαπράττεται ὁσάκις σωματεῖον ἢ μέλος αὐτοῦ διὰ τοῦ διοικητικοῦ συμβουλίου τοῦ σωματείου του ὑπόσχεται ἢ καταβάλλῃ πάσης φύσεως παροχὰς πρὸς ἀθλητὰς αὐτοῦ πρὸς ἐπίτευξιν εὐνοϊκοῦ ὑπὲρ τοῦ σωματείου των ἀποτελέσματος.

(2) .....

(3) 'Εν τῶ παρόντι ἄρθρω·

'ἀθλητὴς' σημαίνει πᾶν ἀθλούμενον πρόσωπον ἀνεξαρτήτως ἐὰν τοῦτο εἶναι μέλος σωματείου ἢ μή·

'σωματεῖον' σημαίνει οἱονδήποτε νομίμως συσταθὲν σωματεῖον ἢ ὀργάνωσιν ἐν τῇ Δημοκρατίᾳ ἐπὶ τῷ τέλει προαγωγῆς τῆς ἐξωσχολικῆς σωματικῆς ἀγωγῆς καὶ τοῦ ἀθλητισμοῦ τῆς Κύπρου γενικώτερον καὶ περιλαμβάνει τοὺς γυμναστικοὺς συλλόγους.

(4) .....

(5) .....»

(English Translation).

"17A - (1) Anyone who,

(a) demands or accepts anything not belonging to him a gift, allowance or benefit of every kind whatever or is promised the same, for the purpose or upon a promise that he will alter the result of an athletic contest in favour or against a club in any group or individual game held or to be held between clubs;

(b) offers, gives or promises a gift, allowance or benefit of any kind whatever -

(aa) to an athlete, member of his household or a relation for the purpose or upon receiving a promise as mentioned hereinabove (a);

(bb) to a club or to a member of its Board of Management or a member thereof or to a mem-

ber of a club or to an athlete of the club for achieving a favourable result in favour of their club and at the expense of his opponent or their opponents.

is guilty of an offence and is liable to imprisonment not exceesindg two years or to a fine not exceeding one thounsand pounds or to both punishments.

Provided that no offence is committed whenever a club or a member thereof through the Board of Management of the club promises to pay an allowance of any kind to athletes of the club for the achievement of a favourable result in favour of the club.

(2) . . . . . .

(3) In this section -

'athlete' means every person taking part in the sport independently of whether he is a member of club or not;

'club' means any legally constituted club or organisation in the Republic constituted for the purposes of promoting out of school physical training and athleticism in Cyprus generally and includes athletic associations."

New sub-section (6) was added by section 6 of Law 87/85 but it is subsequent, and does not apply to the case under consideration.

The main complaint of the appellant as it emerges from the first four grounds of appeal is to the effect that the trial Judge erred in allowing the prosecution, after the close of its case and after a submission of "no case" was made on behalf of the appellant in accordance with the provisions of s. 74(1)(b) of the Criminal Procedure Law,

Cap. 155, on the ground that there was no evidence to prove an essential element in all offences in question, to call additional evidence to prove the element lacking; in the submission of the appellant the error in question resulted in a substantial miscarriage of justice and we were invited in the circumstances to set aside the conviction on all five counts on which the appellant was found guilty by the learned trial Judge.

Before going into the legal aspect of the case I feel that short reference should be made to the facts of this case.

The appellant was charged by virtue of counts 2 and 3 with promising on 16.5.85 and 17.5.85 at Larnaca and by virtue of count 6 with having given £300.- to a certain Demetris Christofides a foot-ball player of "ETHNIKOS Assias" with the intention of altering in favour of ORFEAS Athienou the result of a foot-ball match to be held on 19.5.85 between the aforesaid two clubs (σωματεῖα). By virtue of counts 4 and 5 the appellant was charged with having accepted £500.- from the members of the Committee of ORFEAS Athienou with a promise of altering in favour of Orfeas club the result of the same foot-ball match to be held between the aforesaid two clubs, on 19.5.85.

It is abundantly clear from the definition of club "σωματεῖον" in sub-section 3 of s. 17A of the Cyprus Sports Organisation Law, as amended, that for the purposes of this Law the "club" must be a legally constituted club or organisation in the Republic.

There is no doubt whatever that the legal constitution of a club or organisation entails registration according to our Laws; whether such registration should be effected pursuant to the provisions of the Clubs Registration Law, Cap. 112, or the provisions of the Societies and Institutions Law (Law No. 57/72) it is immaterial; the fact remains that for their "legal constitution" registration is required.

The prosecution had therefore a duty to aver in the particulars of the offences and adduce evidence at the trial covering all the elements constituting the offence in question according to the provisions of the particular statute that created the offence i.e. s. 17A inserted by Law 79/80 in the original legislation on the matter: among these elements was undoubtedly the registration of the clubs in question, as envisaged by sub-section (3) of s. 17A.

This latter element was not formal at all, as submitted by the prosecution. Supposing that in a vicinity few sportsmen create foot-ball team A; and another group of sportsmen in the area sets up foot-ball team B; these teams have no charter, they are not clubs they have no names even, they are not registered under any law; they are just two teams and they meet every Sunday and they play football; with the lapse of some time their rivalry becomes so strong that a member of team A, or even a follower of team A, pays a sum of money to the goalkeeper say, of team B with intend to altering the result of a match to be held between the two teams the following Sunday, in favour of team A; would there be any offence committed under s. 17A of the Law? Definitely not; as the two teams are not clubs or organisations legally constituted. So, the legal constitution of the rival clubs is a sine qua non element for the establishment of the offence under s. 17A.

In the case under consideration the prosecution did not lead in evidence, as part of their case, as regards the legal constitution of the two clubs; in fact they made an unsuccessful attempt to that effect in respect of ΟΡΦΕΑΣ Αθηαίνου only, by producing ex. 1 which really proves nothing in connection with its legal constitution as a club. It is simply a document purported to have been signed by a person self-styled as "General Secretary" Σωματείου ΟΡΦΕΑΣ ΑΘΗΑΙΝΟΥ and is addressed to ΚΟΠ rendering certain information in connection with the Committee of the said club for the year 1984/85.

On 27.9.85 prosecution closed its case without adducing

any other evidence in connection with the legal constitution of the two clubs in question.

At the close of the case for the prosecution learned counsel appearing for the appellant, submitted that a prima facie case has not been made out against appellant as, inter alia, an essential ingredient of the offence was missing, referring to the requisite in respect of the "legal constitution" of the two clubs as envisaged by Law. The submission of learned counsel for appellant was continued at the adjourned hearing of the case on 30.9.85.

After the submission of learned counsel for appellant counsel for ex-accused 2, 3 and 4 likewise made a submission of no case to answer.

Sergeant Kokkinos appearing for the prosecution addressed the Court in reply to both submissions of counsel.

At a certain stage of the address of the prosecuting officer, the Court intervened and as shown from the record indicated to the prosecution that "the Court would consider useful further assistance from the prosecution" on the matter, and suggested "an opportunity for the prosecution to contact the office of the Attorney-General".

Upon this the Police Sergeant appearing for the prosecution applied for an adjournment with a view "to obtaining directions from the Legal Department in connection with the further handling of the case."

Eventually the case was adjourned to the 3.10.85 when Mr. Matsas, Legal Assistant, appeared together with Sgt. Kokkinos for the prosecution; Mr. Matsas applied for leave to re-open the case for the prosecution and adduce evidence in connection with proof of due registration of both clubs as required by law; he maintained that such evidence was not called due to inadvertence and stated that the evidence to be adduced was rather formal and of non-contentious nature.

Counsel for appellant vehemently opposed the application of the prosecution and submitted that the evidence sought to be adduced was substantial and it was aiming at filling the gap left in the case for the prosecution as regards an essential element of the offence which was missing at the time of the close of the case for the prosecution.

Counsel for ex-accused 2, 3 and 4 endorsed the opposition of Counsel for appellant to the introduction of further evidence by the prosecution.

The Court gave its ruling allowing the prosecution to adduce evidence on the issue whether ΟΡΦΕΑΣ and ΕΘΝΙΚΟΣ were clubs within the meaning of sub-section 3 of s. 17A.

In granting leave, the learned trial Judge stated that he took into consideration, "the formal nature of the evidence sought to be adduced independently of the magnitude of its effect, its relation to the totality of the topics raised in the case and further the desirability for the better administration of justice."

Concluding his aforesaid ruling the trial Judge refrained from ruling on the earlier submission of "no case" stressing that he considered it "unnecessary at that stage to say anything in connection with the submission that no prima facie case has been made out sufficiently" against the accused.

I think that in order to complete the picture the following must be added:

Following the ruling of the Court on the adduction of further evidence by the prosecution learned counsel for the appellant applied to the Court for stating a case under s. 148(2) of Cap. 155 for the opinion of the Supreme Court; learned counsel appearing for the prosecution objected to the aforesaid application and the Court refused stating a case.

Counsel for appellant then, invited the Court to rule on his earlier submission of "no case"; the Court refused, stating that he will proceed to hear the fresh evidence to be adduced by the prosecution and then he will proceed to rule on the submission of "no case".

At this stage the case was adjourned for the next-day (4.10.85) when the prosecution started calling evidence in connection with proof of due registration of both clubs as required by Law. Four more witnesses were called by the prosecution on this issue who gave evidence and they were cross-examined at length; three whole days were devoted for the purpose (day in-day out) and the evidence in question covers almost thirty transcribed pages of the record.

After the adduction of this additional evidence by the prosecution the Court did not call upon ex-accused 2, 3 and 4 to defend themselves on their respective counts; the appellant was not called upon to defend himself on count 1 and was called upon to defend himself on counts 2, 3, 4, 5 and 6 on which he was ultimately found guilty as stated earlier on in the present judgment.

Learned counsel for appellant elaborating before us on the main complaint in this appeal vehemently argued that the trial Judge should not even consider an application by the prosecution for re-opening its case at that stage after the close of the case for the prosecution and the submission of "no case" on behalf of the appellant as well as on behalf of the remaining accused, in view of the provisions of s. 74(1)(b) of our Criminal Procedure Law, Cap. 155. In the alternative counsel for appellant submitted that if the trial Judge had a discretion on the matter as provided by the English authorities, he has exercised his discretion wrongly and thus a substantial miscarriage of justice occurred.

Counsel for appellant in his able address laid stress on the fact that the evidence for which the prosecution sought leave at that late stage to adduce, was not just formal evidence; he maintained that it was substantial evidence tend-

ing to prove an essential element of the offence notably the legal constitution of the two clubs pursuant to the provisions of s. 17A(3) of Law 79/80. This element—counsel maintained—was lacking at the close of the case for the prosecution; in the circumstances, he submitted, the Court could not call upon the appellant to defend himself as a prima facie case was not thus made out in respect of all essential ingredients of the offence. By allowing the case of the prosecution to be re-opened—counsel for appellant submitted—the Court permitted the filling of the gap in the case for the prosecution with the result that the appellant was materially prejudiced and therefore substantial miscarriage of justice ensued.

Counsel for the respondent invited us to hold that the trial Judge had a discretion which he exercised correctly by allowing the prosecution to re-open its case as the additional evidence adduced was formal and non-contentious. He cited in support paragraph 4-414 of Archbold's 41st ed. (p. 433) and a number of English cases.

I feel that I should state that the procedure followed in the Court below gave to me a lot of anxiety and concern; I must confess that it is the first time I have come accross an application on behalf of the prosecution to re-open its case after the close of the case for the prosecution and a submission of "no case" by the defence pursuant to s. 74 (1) (b) of our Criminal Procedure Law, Cap. 155.

Having carefully gone through the record of the trial, I am convinced that the application of the prosecution was due to the intervention of the trial Judge at that very late stage when he remarked that "the Court would consider useful further assistance from the prosecution" on the matter of the due registration of the clubs in question; and the intervention of the Court was not confined to the aforesaid remark only; it proceeded to the suggestion of "an opportunity for the prosecution to contact the office of the Attorney-General." From that time onwards it is obvious that the police sergeant who was conducting the case for the prosecution construed the remarks of the Court

as a hint, applied for an adjournment of the case and Mr. Matsas came in the picture at the adjourned hearing applying for the re-opening of the case for the prosecution with a view to adducing evidence supplementing the case thereof.

I feel that in fairness to the trial Judge it must be added that his intervention, erroneous though it was, was obviously modivated by his anxiety to see that justice is done; I think I can reproduce the picture with which he was confronted with, in the Court below: from the side of the defence he had two leading lawyers submitting forcefully that there was no case to answer relying on very subtle and ingenuine point indeed, and on the other side a police sergeant, not a practising lawyer, trying hard to refute the submissions of the defence. Then there came the remark followed by the suggestion which ultimately led to the unpleasant situation for the defence of the appellant.

I hold the view that the learned trial Judge was bound to give his ruling on the submission of "no case" after the close of the case for the prosecution.

This course is abundantly clear from the provisions of s. 74 (1) (b) of our Criminal Procedure Law, Cap. 155 which reads as follows:

"s. 74(1)(b): At the close of the case for the prosecution, the accused or his advocate may submit that a prima facie case has not been made out against the accused sufficiently to require him to make a defence and, if the Court sustains the submission it shall acquit the accused."

The trial Judge could reach no other ruling on the submission of "no case" than a ruling sustaining the submission because as already stated earlier on in the present judgment an essential element constituting each one of the offences set out in the six counts referring to the appellant, was missing; the element in question was the "legal consti-

tution" of the two clubs in question as envisaged by subsection 3 of s. 17A of Law 79/80. That this element was missing is apparent from the record and from the subsequent leave of the Court on the application of the prosecution to adduce further evidence in order to support this gap in the case for the prosecution.

In the circumstances the ruling of the trial Court on the submission of "no case" as above would lead to one and unequivocal result, notably acquittal.

This was the only course open to the trial Judge as s. 74 (1) (b) of our Criminal Procedure Law, Cap. 155 ordains.

I do not think that I should deal with the English authorities cited by both sides; they are inapplicable in the present case as there is special provision in our Law, which excludes the law and rules of practice relating to criminal procedure "for the time being in force in England". (Vide s. 3 of Cap. 155).

It was not open therefore to the trial Judge in the present case to examine even the application of the prosecution for the re-opening of its case.

I fully endorse the following passages from the book of my brethren *Loizou & Pikis* on *"Criminal Procedure in Cyprus"*.

> "After the close of the case for the prosecution the Court must decide whether a prima facie case has been made out against the accused sufficiently to require him to make his defence. If the Court rules that the prosecution failed to make out a prima facie case, then the Court must acquit and discharge the accused without inviting him to make his defence.
>
> In accordance with section 74 (1) (b) of the Criminal Procedure Law, Cap. 155, the accused has a right, after the close of the case for the prosecution,

to make a submission on the ground that the prosecution failed to make out a prima facie case. Even in the absence of such a submission, it is the Court's duty to acquit and discharge the accused, on its own motion, if of the opinion that the prosecution has failed to make out a prima facie case."

In the appeal under consideration the trial Judge instead of ruling on the submission of "no case" after the close of the case for the prosecution—and the ruling could not lead anywhere else except to acquittal—proceeded to allow the prosecution to re-open its case, something impermissible by our law, giving thus the chance to the prosecution to fill in the gaps in its case. This is definitely a material irregularity which renders the quashing of the conviction on all counts unavoidable.

I would therefore allow the appeal and quash the convictions on all five counts.

PIKIS J.: I am of opinion, in agreement with Loris, J., the appeal must be allowed and the conviction of the accused on five counts founded on s. 17A of the Cyprus Sports Organization 1969(1) be quashed. It is unnecessary to reproduce the facts of the case relevant to the appeal detailed in the judgment of Justice Loris. Though broadly in agreement with the reasons supporting the judgment of Loris, J., I consider it necessary, in view of the importance of the issues raised and the absence of precedent in Cyprus, to record in my own words the reasons for allowing the appeal; thus illuminating the issue by more than one judicial opinions.

Although our code of Criminal Procedure—Cap. 155—derives from English law and is modelled on the common law adversarial system of criminal justice it reflects, as often the case with codified legislation, the complexion of English law on the subject at the time of its codification. Our

(1) As amended by s 2 of Law 79/80

code of Criminal Procedure was not specifically codified for Cyprus but repesents a model of criminal procedure introduced by the British in their former colonies, a model that broadly reflects English procedure and practice in criminal cases(1). Notwithstanding codification, English practice and procedure are still relevant in two respects: First, as a supplement to the code "as regards matters of criminal procedure for which there is no special provision in this law" (as s. 3, Cap. 155). Second, as an aid to the interpretation of the provisions of Cap. 155 that have their counterpart in English law. English cases on the interpretation of English law are particularly helpful as a guide to the interpretation of similar or comparable provisions in our statute. Further to the above, English practice and procedure are always relevant to the extent that they illuminate the fundamental precepts of criminal justice under the common law.

But there is no warrant for the application of English practice and procedure when in conflict with our statute, namely, the Criminal Procedure Law, Cap. 155. In face of such conflict, the clear duty of the Court is to follow our statute law without any deviation therefrom. I very much feel that the learned trial Judge fell into error in this case because he assumed, without probing the matter, that our code, s. 74 (1) (a) and (b) in particular, embody or leave room for the application of current judicial practice in England with regard to the reopening of the case for the prosecution after it is closed. His assumption was fallacious as s. 74 confers no discretion to the Judge in the matter. The only occasion when the prosecution can legitimately call evidence after the close of the case for the prosecution is rebuttal evidence that may be adduced after the close of the case for the defence, in accordance with and subject to the specific provisions of s. 74 (1) (e), Cap. 155.

The right of the prosecution to call evidence in support

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

of the charge is regulated by s. 74 (1) (a). It provides that such evidence must be adduced after a plea of not guilty recorded in accordance with s. 73, whereupon the prosecutor or the advocate for the prosecution "shall proceed to call the witnesses and adduce such other evidence as may be adduced in support of the case for the prosecution". The duty of the prosecution to call their evidence at that stage of the proceedings is mandatory as denoted by the use of the word "shall". They have no right to call evidence in support of the charge at any other stage of the proceedings, nor has the Court discretion to allow them to do so. Neither s. 74 nor any other provision of the Criminal Procedure Law confers such a right on the prosecution or a discretion to the Court to allow them to do so.

At the close of the case for the prosecution the accused has a right to make a submission of no case, whereupon the Court must necessarily, if it sustains the submission, acquit the accused. The wording of s. 74 (1) (b) is amenable to no other interpretation. It reads:-

"(1) After the witnesses have left the Court as in s. 73 of this Law provided, the Court shall proceed to hear the case in the manner following:

(a) .....

(b) At the close of the case for the prosecution, the accused or his advocate may submit that a prima facie case has not been made out against the accused sufficiently to require him to make a defence and, if the Court sustains the submission, it shall acquit the accused".

It is clear from the plain wording of the law that no discretion resides with the Court at that stage of the proceedings to allow the prosecution to reopen its case for any purpose whatever.

The duty of the Court to rule on the sufficiency of the

case for the prosecution with a view to deciding whether to call the accused in his defence, originates from the corresponding right of the accused at common law not to be called in his defence unless the prosecution first makes a prima facie case against him(1). The wording of s. 74 is fashioned to the traditional approach of the English law respecting the duty of the prosecution to adduce all its evidence before closing its case, reflected, inter alia, in the case of *Reg.* v. *Frost*(2). As late as 1974 we find the same view echoed in *R.* v. *Pilcher*(3) "the rule that the prosecution must finish their case once and for all before the defence starts, is a very important and salutary rule. A recognized exception to this rule acknowledged a right to call further evidence if the matter arose ex improviso(4).

The implications of failure of the prosecution to lay the foundations of the charge before closing its case are nowhere better illustrated than in the case of *Abbott*(5). The conviction of the accused was quashed despite his incriminating evidence in the witness box because he was called upon to make his defence notwithstanding the failure of the prosecution to make a prima facie case against him. The right of the accused not to answer to an unfounded or ill-founded charge, is fundamental under our system of criminal justice and cannot be whittled down by events subsequent to the close of the case for the prosecution.

As earlier stated, s.74(1)(a) and (b) has fashioned our criminal procedure in the area here under consideration to the traditional approach of English law to the subject. The prosecution can have no more than one chance to prove its case against the accused. They compete their case as provided in s.74(1)(a) by the close of the case

(1) See, inter alia, R. v. Plymouth Justices [1982] 2 All E.R. 175 (D.C.).
(2) (1839) 9 C. & P. 129.
(3) 60 Cr. App. R. 1, 5.
(4) Crippen [1911] 5 Cr. App. R. 260.
(5) 3 Cr. App. R. 141.

for the prosecution. Thereafter the stage is set for the defence. If no prima facie case is made against the accused, he is entitled to be acquitted; if there is a case, he must be apprised of the defence rights (s.74(1)(c), Cap. 155) in order for him to make his defence as provided in s.74(1)(d).

Recent English cases suggest that English practice and procedure have changed over the years and discretion is now acknowledged to the Court to allow the prosecution to reopen its case after the close of the case for the prosecution. Thus in *Regina* v. *Tate*(1) the Court of Appeal refused to interfere with the ruling of the trial Judge to admit an analyst's certificate after the close of the case for the prosecution and a submission of no case to answer. The Judge felt it necessary to admit the evidence in order to be able to direct the jury, in time, in a correct factual perspective, fearing that without the additional evidence the jury might fall into confusion. Although the Court of Appeal in the above case did not interfere with the discretion of the trial Court, they reaffirmed the importance of the principle in *Pilcher* (supra) as the basic norm, albeit subject to exceptions.

Two cases cited to us in particular, suggest that the discretion of the Court to allow the adduction of additional evidence after the close of the case for the prosecution, is not confined to formal or technical matters but extends to matters of substance as well. They are ***Piggot*** v. ***Simms***(2) and *Matthews* v. *Morris*(3). The change of practice in England noted above, cannot be reconciled with the provisions of s.74 and for that reason the new approach of English Courts to the matter can have no application in Cyprus. English practice and procedure can neither supplant nor override the plain provisions of our statute that leave no discretion to the Court to allow the prosecution to reopen its case after closing it.

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(1) [1977] R T R 17

(2) [1972] Crim L R 595

(3) [1981] Crim L R 495

The only provision of the Criminal Procedure Law, Cap. 155, that confers discretion on the Court to call or recall witnesses at any stage of the proceedings is s.54. So long as the proceedings are in being the Judge may avail himself of the power vested him under s. 54 provided it appears to the Court "essential to the just determination of the case." The discretion under s.54 belongs exclusively to the trial Court and any evidence adduced in exercise thereof is evidence introduced by the Court for the just determination of the case. Section 54 confers no power on the Court to allow the prosecution to reopen its case after closing it. The position of the Judge under our legal system constrains him to the role of an impartial arbiter between the prosecution and the defence charged throughout the trial to hold the scales even between the two sides. Hesitant as I am, always, to cite from *Criminal Procedure in Cyprus*(1), I shall make an exception in this case for after due reflection there is nothing I wish to add to the analysis made therein of the scope, ambit and effect of s.54. The following passage(2) makes a comprehensive analysis of its provisions:-

> "The Court, at any stage of the proceedings, may call any person as a witness or recall and further examine any person already examined and the Court may examine or recall and further examine any such person if his evidence appears to the Court to be essential to the just determination of the case (s.54 Cap. 155).
>
> The wide powers possessed by the Court to call and recall witnesses must be exercised judicially, in the interests of justice. A Judge will not normally assume responsibility to call a witness, unless there are strong reasons militating for such a course.
>
> A wider latitude is allowed to recall witnesses who have already testified but there again a Judge will

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(1) By A N Loizou and G M Pikis

(2) Page 120

not, on light grounds, recall a witness with a view to introducing fresh matter: a Judge may more readily accede to an application to recall a witness, or he may take the initiative for such a course, if this is considered essential for the purpose of just determination of the case.

After the close of the case for the prosecution, a Judge should only call a witness if the matter arises ex improviso. In exceptional cases a Judge may be right to call a witness after the close of the case for the defence, even though the matter does not arise ex improviso, if it is not intended thereby to supplement the case for the prosecution.

In general, the acknowledged right of the Judge to call a witness at any stage of the proceeding is limited, after the close of the case for the defence, to matters arising ex improviso. This rule is relaxed if the Judge wishes to recall a witness after the close of the case for the defence so as to refresh his recollection of the evidence of the witness if his note of the evidence is inadequate."

The power under s.54, as indeed that vested in the Court by s.83, Cap. 155, is separate and altogether independent from the provisions of s.74, Cap. 155. Though the prosecution as well as the defence may alert the Court to the need for the reception of further evidence in the interest of justice, any decision of the Court under s.54 must reflect the Judge's appreciation of the interest of justice in the particular case and any evidence adduced thereafter must be introduced at the initiative of the Court.

In this case, as may be gathered from the ruling of the trial Court and the sequence of events thereafter, the prosecution was allowed to reopen its case and four prosecution witnesses were called to fill the gap in the case of the prosecution. The evidence was in every respect prosecution evidence and was introduced as such with examination in

chief, cross-examination and re-examination of the witnesses. As may be inferred, both from the ruling of the Judge allowing the prosecution to reopen its case and his conclusions set out in the final judgment, without such evidence the case for the prosecution was doomed to failure. For, in accordance with s.17A of the law, under which the accused were charged, it is a vital ingredient of the offence that the bribe should be received or offered with a view to altering the result of a sporting contest held between clubs duly registered under the law; in this case a football match. At the close of the case for the prosecution, the prosecution failed to establish that the contesting clubs had the status envisaged by the law (duly registered).

The suggestion made by counsel for the prosecution that the evidence was left out because of an oversight, could hardly be persuasive. First, it was made as an alternative to the primary submission of the prosecution that the evidence then before the Court disclosed a prima facie case. Secondly, no averment was made in the charges or particulars to the offences on which the convictions were founded that the contest was between registered football clubs. In the absence of such averment, the charges disclosed no offence under s. 17A of the law under which they were laid. The inference is that the omission to introduce the additional evidence before the close of the case for the prosecution was bound up with the premise of the case for the prosecution and the absence of legal foundation thereto. Necessarily we must, because of the above, quash the conviction. I make no excuse for allowing someone to go free, notwithstanding the evidence eventually adduced that might support an amended charge. I share the sentiment of the Court of Appeal in *Abbott*(1) expressed in these terms: "Although it is unfortunate that a guilty party cannot be brought to justice, it is far more important that there should not be a miscarriage of justice and that the law should be maintained rather than that there should be a failure in some particular case". It is through, if I may

(1) 3 Cr. App. R. 141, 149.

be allowed to add, the observance of proper procedural standards that the quality of justice is safeguarded and ultimately freedom itself.

A. Loizou J.: I regret that I cannot agree with the approach of my Brother Judges, hence I shall be giving the reasons of my dissent.

The appellant was found guilty on five counts that is counts 2 to 6, both inclusive as regards offences contrary to Section 17A (1) (a) (b) (aa), of the Cyprus Sports Organization Law 1969, Law No. 41 of 1969, as amended by Law No. 79 of 1980, that is giving promises to offer a gift to an athlele for the purpose of changing the result of a foot-ball match and acceptance of a gift for the purpose of changing the result of a foot-ball match.

The sentence imposed on him was that of one year's imprisonment on counts 2 and 4, sentences to run concurrently. No sentence was imposed on counts 3, 5 and 6 in view of their connection with the other two counts.

I shall not enter into the particulars of the offences and the findings of fact made by the learned trial Judge based, as they were, on the credibility of witnesses, as at this stage I shall by examining the first ground of appeal as argued before us, namely that the learned trial Judge wrongly allowed the prosecution after the close of its case and after a submission of no case to answer was made on behalf of the appellant in accordance with the provisions of section 74 (1) (b) of the Criminal Procedure Law, Cap. 155 on the ground that there was no evidence to prove an essential element in all the offences in question, to call additional evidence to prove the element lacking.

Section 74 (1) (a) and (b) read as follows:-

> "74. (1) After the witnesses have left the Court as in section 73 of this Law provided, the Court shall proceed to hear the case in the manner following:-

(a) the prosecutor or the advocate for the prosecution shall proceed to call the witnesses and adduce such other evidence as may be adduced in support of the case for the prosecution;

(b) at the close of the case for the prosecution, the accused or his advocate may submit that a prime facie case has not been made out against the accused sufficiently to require him to make a defence and, if the Court sustains the submission it shall acquit the accused;"

Section 54 of the Law reads as folows:

"54. The Court at any stage of the proceedings, may call any person as a witness or re-call and further examine any person already examined and the Court may examine or re-call and further examine any such person if his evidence appears to the Court to be essential to the just determination of the case."

Before proceeding any further it is necessary to cite also section 3 of Cap. 155 which provides that:

"3. As regards matters of criminal procedure for which there is no special provision in this Law or in any other enactment in force for the time being, every Court shall, in criminal proceedings, apply the Law and rules of practice relating to criminal procedure for the time being in force in England."

Cap. 155 introduced in Cyprus the English Criminal Procedure Laws and Practice with minor modifications. In interpreting same reference is freely made to English precedent on the interpretation of corresponding provisions in the English Law (see Criminal Procedure in Cyprus by Loizou and Pikis p. 3).

The aforesaid two sections 74 and 54 do not in any way constitute any special provision in our Law excluding the application of the Law and rules of practice relating to criminal procedure for the time being in force in England. In view of this I intend to turn to the position in England.

Under the general heading "Extent to which evidence other than defence evidence may be adduced after the prosecution has closed its case," there appear in *Archbold's Criminal Pleading Evidence and Practice* 41st Edition p. 429 et seq. the following subheadings;

1. "General Principle of Practice that Evidence should be called at the proper time." 2. "Evidence in Rebuttal" (which has four sub-paragraphs) 3. "The power of a Judge to call a witness", and (4) "Evidence Inadvertently omitted from Crown's case."

The latter with which we are concerned in this case is under paragraph 4 - 414 which reads as follows:

"(4) *EVIDENCE INADVERTENTLY OMITTED FROM CROWN'S CASE*

"From time to time evidence of a formal nature, or clearly not capable of being the subject of dispute, which should have been adduced before the prosecution closed its case, is overlooked and submissions of no case to answer are accordingly made. No clear rule has emerged as to the extent of the Judge's discretion to allow the Crown to repair the omission. It is submitted that the balance of authority in the cases cited below indicate that the discretion is confined to evidence of a formal or non-contentious nature which may or may not be a matter of substance."

The aforesaid proposition is duly supported by a number of authorities that can be found under the heading "Identity" in paragraph 4 - 417.

In *Middleton* v. *Rowlett* [1954] 2 All E.R. 277, D.C., the Court upheld the magistrates' refusal to allow the prosecution to reopen its case in order to prove the identity of the driver in proceedings for dangerous driving. The Court described it as "a border line case" but affirmed that the magistrates had a discretion which they were not bound to exercise in favour of the prosecution.

In *Saunders* v. *Johns* [1965] Crim. L.R. 49 D.C. the defendant was charged with exceeding the speed limit and his solicitor stated at the beginning of the hearing that the issue was one of identity. No evidence was given which identified the defendant as the driver. A submission of "no case" was overruled and the defence closed its case without calling any evidence. The justices then recalled the police officer who said that the name and address in the driver's driving licence were those of the defendant. It was held that, allowing the defendant's appeal, no prima facie case had been made out at the close of the prosecution and the recall of the officer after the defence case had been closed was wrong. As soon as the submission of no case was made the prosecution, or the Court of its own motion, should have recalled the officer and obtained the evidence about the driving licence."

In *R.* v. *Mckenna* [1956] 40 Cr. App. R. 65. the defendant was charged with the export of articles in contravention of the Export of Goods Order 1952. To be within the terms of the Order the articles had to be "goods subjected to any process of manufacture, wholly or mainly of iron or steel." A submission of "no case" was made at the end of the prosecution on the ground that there was no evidence that any of the articles in question were made wholly or mainly of iron or steel. The Judge recalled a prosecution witness to give that evidence and then ruled that there was a case to answer. It was held that in such circumstances a Judge has a complete discretion whether a witness shall be recalled and the Court will not interfere with the exercise of it unless it appears that thereby an injustice has resulted.

In *Matthews* v. *Morris* [1981] Crim. L.R. 495 the defence submitted that evidence which was available to the prosecution ab initio should not be adduced to remedy a defect in the prosecution case once it has been closed, and that there was a discretion to re-open the case only to admit technical or formal evidence which was not disputed.

Held dismissing the appeal, that considering *Middleton* v. *Rowlett* [1954] 2 All E.R. 277, *Piggott* v. *Simms* [1973] R.T.R. 15 and *Pilcher*, 60 Cr. App. R. 1; the justices had a discretion to allow the prosecution to re-open the case which was not limited to formal or technical matters but included matters of substance. The discretion should be argued judicially. The evidence in dispute here was omitted by a simple mistake and there was no injustice to the defendant in allowing the prosecution case to be re-opened.

In *Piggott* v. *Simms* [1972] Crim. L.R. 595 the prosecutor closed his case without putting the certificate regarding alcohol in the blood of the accused exceeding the prescribed limit and as a result there was no material justifying conviction. Without making any submission the defendant began giving evidence. The prosecutor then sought permission to put in the certificate. The justices, having been referred to *Price* v. *Humphreys* [1958] 2 Q.B. 353, were of opinion that the evidence was formal, rejected an objection by the defendant, and permitted the prosecutor to reopen his case and put in the certificate. At the defendant's request, and without proceeding further with the information, the justices stated a case for the opinion of the Queen's Bench Divisional Court.

Held, remitting the case to the justices to continue the hearing that, although there had been no mere error of procedure but a failure to adduce a vital part of the prosecutor's case, the justices had a discretion to permit the prosecutor to put in the certificate even though his case had been closed. Following *Middleton* v. *Rowlett* [1954] 1

W.L.R. 831 they were not bound to exercise discretion in the prosecutor's favour but had a complete discretion.

In *R.* v. *Doran* [1972] 56 Crim. App. R. 429, it was held that the discretion of a Judge to allow fresh evidence to be called for the prosecution after its case was closed is not limited to evidence of a strictly rebutting character.

Reference may also be made to the case of *Regina* v. *Tate* [1977] R.T.R. p. 17, where it was held that albeit the case for the prosecution was to be brought to an end before the defence was called on to meet the case the trial Judge had a discretion to allow the prosecution to call further evidence after closing their case. Lawton L.J. in delivering the judgment of the Court said after observing that he doubted whether there had been a relevant case which counsel for the applicant had not discovered conceded and brought to the attention of the Court the following:

> "As has already been stated, the line of authority starts with *Reg.* v. *Frost* (1839) 9 C and P 129. But, as long ago as 1911, the predecessor of this Court appreciated that what was said by Tindal CJ in *Reg.* v. *Frost* was too restrictive: see *Rex* v. *Crippen* [1911] 1 KB 149. Since 1911 there have been a number of cases before this Court and its predecessor in which the problem has had to be considered. It suffices we think to say, without going through the cases in detail, that it is now clearly established that the trial Judge has a discretion whether he will allow the prosecution to call any more evidence after they have closed their case. The exercise of discretion will not be interfered with by this Court unless it has been exercised either wrongly in principle or perversely. Mr. Payne of course did not suggest in this case that it had been exercised perversely.
>
> What he said was that the area in which the discretion can be exercised is very narrow. That would appear to be so from the judgment of Lord Widgery

J. in *Reg.* v. *Pilcher* [1974] 60 Cr. App. R. 1. As with all cases relating to the exercise of discretion, the Court has to look at the facts out of which the case arose. In *Reg.* v. *Pilcher* the facts were somewhat unusual. The prosecution had known that a certain witness could give evidence touching on the matters which were under investigation, but at the beginning of the trial counsel had taken the view that the evidence of that witness was not of any material importance. As the trial proceeded, the prosecution awoke to the probability that the evidence which they had not thought material might be very material indeed. After the prosecution had closed their case and some evidence had been given for the defence, the prosecution asked for leave to call that witness. The trial Judge, who gave leave for the witness to be called, exercised his discretion on the basis that the material consideration was whether the interests of justice would best be served by allowing the witness to be called. This Court in *Reg.* v. *Pilcher* adjudged that that was too wide an approach and that the Court had to bear in mind the principle that the prosecution case should be brought to an end before the defence was called on to meet that case."

It is apparent from the aforesaid passage that what was held in *R.* v. *Frost* was considered as too restrictive and that there exists a discretion to allow the prosecution to reopen the case, such discretion not being limited to formal or technical matters but including matters of substance.

Needless to say as Lawson L.J. put it that "Courts should be alive to the dangers of allowing the prosecution to call witnesses whose evidence, the defence until that late stage of the trial had had no opportunity of considering." It is obvious that this is not this case.

The test just referred to above duly covers the facts and circumstances of the present case. What was thought to be proved which had inadventently been omitted was that the club "Orfeas" was a legally constituted club. That could

be done by producing the certificate of its registration or the Register in which such registration was contained under the relevant laws which might be the Clubs Registration Law, Cap. 112 or the Societies and Institutions Law 1972 Law No. 57 of 1972, or by some other admissible evidence. After all this club had been participating in an official tournament and more so it had claims for championship. It would be too far fetched to say that proof of its lawful constitution was anything more than a formality in the circumstances.

As regards the analysis of the Law to be found in the Criminal Procedure in Cyprus by A. N. Loizou and G. Pikis, at p. 120 just quoted by my Brother Justice Pikis, no-one can disagree with its correctness. It has, however, to be noted that it comes under the heading "Power to call and recall a witness" and deals with the ex improviso rule which is dealt with, under the heading "Evidence in Rebuttal", in Archbold (supra) paragraph 4-409 in which reference is made to a number of authorities, whereas in the present case we are concerned with a particular topic namely, that of evidence inadvertently omitted from the prosecution's case, which as already seen is governed by well defined rules and in no way conflicts with the aforementioned statement of the Law.

In view of the wording of the relevant provisions of our Law, I have no difficulty in holding that neither section 74, nor section 54, take away the discretion which a trial Judge or a Court has in allowing the prosecution to call evidence after it closes its case, even after a submission of no case is made, where there has been inadvertently omitted to be adduced evidence of a formal, technical or not contentious nature which may or may not be a matter of substance.

For all the above reasons this ground of Law fails.

Having reached this conclusion in respect of which the majority of this Court has already concluded to the contrary, I feel compelled to deal with the remaining grounds

of appeal though it is unnecessary to do so at length. It is enough to say that the claim that the statements of the appellant, both the oral one after which he led the police to his house and they were handed by his wife the £700.- balance of the amount of gift, allowance or benefit which was the money for the purpose of altering the result of the match in question and the written statement he gave thereafter were duly admitted by the learned trial Judge in the exercise of his discretion and being convinced for the reasons given in his extensive ruling about their voluntariness.

Once therefore this ground also fails the conviction of the appellant could not but be upheld as there was overwhelming evidence against him establishing beyond reasonable doubt the offence for which he was found guilty by the learned trial Judge and I find no reason to interfere with it. In the light, however, of the majority view, this appeal succeeds and the conviction on all five counts is quashed.

Appeal allowed by majority.