1988 December 22

(SAVVIDES KOURRIS BOYADJIS JJ.)

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

KYRIACOS CHRISTODOULOU KYPRIANOU,

Respondent

(Criminal Appeal No. 4958)

Criminal procedure — Charge — Defectiveness of — When it does not accord with evidence adduced — Leonidou v. The Police (1987) 2 C.L.R. 96

Obtaining money by false pretences — The Criminal Code, Cap. 154, sections 297 and 298 — Reproduction of section 32(1) of the English Larceny Act, 1916 — «Obtains» — It means to obtain the property, not merely possession of it — Section 298 creates only one offence, which can be committed in two different ways

Criminal Procedure — The Criminal Procedure Law, Cap. 155, sect. 39 (the proviso thereto) — Object and ambit of the proviso

Criminal Procedure — The Criminal Procedure Law, Cap. 155, section 84(5) — Adding a count — Prerequisites of the application of the section — It does not apply if the offence is disclosed but the particulars referred to one or more ways that can be committed whilst the evidence showed its commission in another way

Criminal procedure — The Criminal Procedure Law, Cap. 155, section 83 — Amendment of charge — It vests Court with power but it does not cast a duty upon the Court to order amendment

The respondent was acquitted of a charge of obtaining money by false pretences, contrary to sections 297, 298 and 20 of the Criminal Code, Cap. 154.

The particulars of the offence were that the respondent «... by false pretences and with intent to defraud did obtain from one Antonakis Andreou the sum of £4,720.» The particulars went on and described what were the false pretences.

The evidence, however, showed that the money went to the company Kypros Kyprianou Estates Ltd., of which the respondent was an employee.

In fact, the whole defence of the respondent relied from the very beginning on this fact.

The trial court, relying on the authority of R. v. Lurie [1951] 2 All E.R. 704, acquitted the respondent.

This is an appeal against such acquittal filed by the Attorney-General under section 137(1)(a) (iii) of the Criminal Procedure Law, Cap. 155, i.e. on the ground that the trial Court wrongly applied the law to the facts of this case.

Counsel for the appellant argued that:-

(a) The charge was not defective.

(b) R v Lurie, supra, is distinguishable from this case, because in this case there is no evidence where the money went after it was paid to the respondent. This is in fact an insinuation that the respondent might have cheated his employers.

(c) That the trial Court ought to apply the proviso to section 39 of Cap. 155.

(d) That the trial Court should have exercised its power to amend the charge, either under section 83 or under section 85(4) of the same Law.

It must be noted that a passage in the judgment of the Court reads as follows:-

«I feel that since it has not been included in the charge sheet that the accused indicated the payment of monies to another and that the monies were used by another person or company and especially in the light of the fact that the whole defence relied on this point, the Court cannot find the accused guilty and, therefore, he should be discharged».

Held, *dismissing the appeal*: (1) The charge was defective. The matter is covered by authority. (Leonidou v. The Police (1987) 2 C.L.R. 96)

(2) Recitation of the facts of R. v. Lurie, supra, shows that that case cannot be distinguished from this case. Sections 297 and 298 of Cap. 154 reproduce substantially section 32(1) of the English Larceny Act, 1916. Therefore, the word «obtains» in section 298 should be construed in the context of section 32(1). «Obtained» means obtained the property and not merely the possession of the property.

For this reason and in view of the evidence, the charge, in the way it was framed, was rightly dismissed

(3) The object of the proviso to section 39 is to eliminate the possibility of unmerited acquittals because of, inter alia, some misdescription or inaccuracy in the particulars of the offence in cases, where it is shown that the accused is not thereby misled as to the nature of the case, which he has to meet Its object is not to render inactive sections 83, 84 and 85 of Cap 155, which regulate the amendment of a defective charge or information, or to provide a substitute for those sections

Be that as it may, the proviso has no application in cases where, in the opinion of the Court, the accused was in fact misled by the error

Although it does not seem that the trial judge directed its mind to the aforesaid proviso to section 39 the statement in the judgment quoted hereinabove suggests that the Court felt that it would have been prejudicial and unfair for the respondent in view of his line of defence, if the nature of the case were to change

(4) The power of the trial Court under section 85(4) of Cap 155 to direct a count or counts to be added to the existing charge or information was considered in a number of decisions of this Court one of the most recent being that of Leonidou v The Police

In this case, the trial Court could not act under section 85(4) This section applies in the first place, where the evidence establishes the commission of an offence not included in the charge, whereas section 298 creates only one offence, which can be committed in one of two alternative ways The defectiveness in this case could only be cured by amendment Moreover, section 85(4) is not to be applied to the prejudice of the accused

(5) Section 83 vests the Court with power to order amendment, but does not cast upon it a duty to do so

Appeal dismissed

Cases referred to

Xenepoulos v Charalambous, 1961 C L R 122,

Attorney-General v Hassan (1971) 2 C L R 316,

R v Lune [1951] 2 All E R 704

Leonidou v The Police (1987) 2 C L R 96,

R v Ball [1951] 2 K B 109,

R v Smith [1950] 2 All E R 679

Appeal against acquittal.

Appeal by the Attorney-General of the Republic against the decision of the District Court of Limassol (Fr. Nicolaides, S.D.J.) given on the 3rd November, 1987 (Criminal Case No. 29048/86) whereby the respondent was acquitted of the offence of obtaining money by false pretences contrary to sections 297, 298 and 20 of the Criminal Code, Cap. 154.

Gl. Hadjipetrou, for the appellant.

L. Clerides, for the respondent.

Cur. adv. vult.

SAVVIDES J.: The judgment of the Court will be delivered by Boyadjis, J.

BOYADJIS J.: This is an appeal filed by the Attorney-General of the Republic against the acquittal of the respondent by the District Court of Limassol on a single count charging the respondent, accused No. 2 on the charge sheet, that together with a certain Kypros Kyprianou, accused No. 1, did obtain money by false pretences contrary to sections 297, 298 and 20 of the Criminal Code, Cap. 154. Accused No. 1 was not traced within the jurisdiction for the purpose of effecting service of the summons upon him and the police withdrew the case against him. Thereafter the police proceeded to prove their case against the present respondent.

An appeal against an acquittal can only be made or sanctioned by the Attorney-General on one of the four specific grounds exhaustively set out in section 137(1)(a) of Cap. 155. (See *Xenopoulos v. Charalambous*, 1961 C.L.R. 122, and *The Attorney-General of the Republic v. Ali Osman Hassan* (1971) 2 C.L.R. 316).

Learned counsel who appeared for the appellant stated that this appeal is being made under sub-paragraph (iii) of paragraph (a) of sub-section (1) of section 137 of the Criminal Procedure Law, Cap. 155, which provides that an appeal like the present one may be made or be sanctioned by the Attorney-General on the ground «that the law was wrongly applied to the facts».

The salient facts of the case appear on the record before us. They are briefly as follows:

The Particulars of the Offence set out in the charge-sheet were to the effect that:* «the accused (ex-accused 1 and the Respondent) between the 24th day of November, 1983 and the 29th day of August, 1986, at Limassol, in the District of Limassol, by false pretences and with intent to defraud, did obtain from one Antonakis Andreou of Pano Polemidhia the sum of £4,720, the false pretences being in substance and to the effect that they (accused) pretended to the said Antonakis Andreou that they were the owner of a building site at the locality «Gonies» area of K. Polemidhia on Sheet/Plan LIII/56, Plot 480 Regn. No. 26780 which they agreed and sold the 1/2 portion of the said building site for the sum of £5,000, whereas in fact and truth the said whole building site was transferred to their sister namely Photoulla Christodoulou Kyprianou of Dali.»

In support of their case the Prosecution called seven witnesses. On being called upon to make his defence, no submission having been made by his counsel at the close of the prosecution case, the respondent made an unsworn statement from the dock alleging, inter alia, that he, being a mere employee of Kypros Kyprianou Estates Ltd., was himself a victim of ex-accused 1, that he had not obtained any money for himself and that the money went to the company Kypros Kyprianou Estates Ltd., which had issued to the complainant receipts for all the sums which he had paid. The respondent had based his defence on this point throughout the proceedings and his counsel submitted in his final address that the respondent should be acquitted on the sole ground that the prosecution failed to prove that he had obtained any money for himself.

In its judgment the trial Court stated (a) that the respondent made the false statements set out in the Particulars of the Offence, knowing that same were false, and (b) that, relying on the false statements of the respondent, the complainant paid over to him certain moneys in respect of which he issued receipts to the effect that he had received it for the account of Kypros Kyprianou Estates Ltd. The trial Court also stated that there was no evidence to substantiate the allegation in the Particulars of Offence that the respondent obtained any money for his own account or benefit and, relying on the authority of *R. v. Lurie* [1951] 2 All E.R. 704,

* *The quotation in inverted commas is a verbatim reproduction of the Particulars of the Offence set out in the charge-sheet.*

oncluded that the charge was defective and acquitted and scharged the respondent on this sole ground, having especially ıken into consideration that the whole defence of the respondent t the trial was based on this point.

Learned counsel appearing for the appellant conceded that no vidence had been adduced to prove that the respondent had btained the money for his own account or that he had used it for imself, as it is alleged in the Particulars of the Offence. Yet, lying, as we have already stated, on section 137(1)(a)(iii) of Cap. 55, he argued before us that: (i) the trial Court erred in holding ıat the charge was defective and (ii) even if the charge were really efective, the court ought not to have acquitted the respondent; ıstead, it ought either (a) to have convicted the respondent ithout any prior amendment of the charge applying the proviso) section 39 of the Criminal Procedure Law, Cap. 155, or (b) to ave exercised the discretion vested in it by section 83 and/or ection 85 of the said Law and effect, on its own motion, all mendments that the evidence warranted, and then proceed to onvict the respondent.

The grounds of appeal in furtherance of which the aforesaid rguments were made, are the following:

«1. The trial Court misapplied the law to the facts of the present case.

2. The trial Court wrongly found that the count was defective.

3. Alternatively and without prejudice to the above grounds, even if the charge was defective as found by the trial Court, this was no reason for the Court to discharge the accused in view of the statutory provisions of the Criminal Procedure Law, Cap. 155.»

A fourth ground set out in the Notice of Appeal was abandoned.

Learned counsel for the respondent argued that the allegation the appellant set out in Ground 1 above that «the trial Court isapplied the law to the facts of the present case» refers clusively to the alleged wrong declaring by the Court of the arg e defective and to the failure of the Court to amend the arge if it were really defective. Counsel for the respondent also gued that none of the above complaints fall within the ambit section 137(1)(a)(iii) of Cap. 155 upon which the present appeal based.

We shall assume for the purpose of argument that the allegations of the appellant fall under section 137(1)(a)(iii) of Cap. 155 and we shall proceed, on the aforesaid assumption, to examine them on their merits.

The first question to be determined is whether the charge is defective or not. Mr. Clerides for the respondent says that it is defective. Mr. Hadjipetrou for the appellant says that it is not.

The answer to the question is in the affirmative. The charge is defective. The matter is covered by authority. In *Leonidou v. The Police* (1987) 2 C.L.R. 96 the Supreme Court dealt with the question of when a charge or information may be considered as defective and, and at pp. 103 and 104, it recited with approval the following statement of the law set out in Archbold's Criminal Pleading, Evidence and Practice, 40th ed. p. 52, para. 53:

«(a) An indictment is defective not only when it is bad on the face of it, but also:

(i) When it does not accord with the evidence before the committing magistrates either because of inaccuracies or deficiencies in the indictment or because the indictment charges offences not dislosed in that evidence or fails to charge an offence which is disclosed therein.

(ii) when for such reasons it does not accord with the evidence given at the trial *R. v. Hall* [1968] 52 Cr. App R 528, *R. v. Johal and Ram* [1972] Cr. App. R. 348».

It is common ground that in the present case the evidence adduced does not accord with the allegation in the particulars of the offence that the respondent «obtained» for his own benefit the money with which the complainant was induced to part relying on the respondent's false statements. The charge is, therefore, defective in this sense.

The next question to be determined is whether, the defective charge having not been amended either at the instance of the prosecution or on the Court's own motion, the Court was right in acquitting the respondent. Relying on the decision in the English case of *R. v. Lurie* (supra) Mr. Clerides for the respondent says that the respondent was rightly acquitted. Mr. Hadjipetrou for the appellant, on the other hand, says that (a) Lurie's case is distinguishable from the present case and the Court should not have followed it; and (b) the Court should have applied the

proviso to section 39 of Cap 155 and convict the respondent without amending the charge

We shall first consider the submission that Lurie's case is distinguishable from the present case What were the facts in Lurie's case and what was actually decided in it? It was a decision of the Court of Criminal Appeal The appellant had been found guilty with two other persons on two charges of obtaining money by false pretences contrary to section 32(1) of the Larceny Act, 1916 The particulars of the first offence were that the appellant and his two co-prisoners «with intent to defraud obtained from Leslie Collier Nicholls a cheque for £2,500 by falsely pretending that the Donella (Wine) Co , Ltd , was then a financially sound and prosperous business and that the Royal Automobile Club was a customer of the said company and that £2,500 was then required for the purchase by the said company of whisky and that they then intended to apply the proceeds of the said cheque substantialy for that purpose » The other count charged the same persons with having obtained a further cheque for £4,300 from Mr Nicholls by similar false representations Delivering the judgment of the Court of Appeal, Lord Goddard C J , said the following at pp 705 and 706 of the report

> «So far as the charges of false pretences are concerned, the circumstances were that the appellant made representations which the jury by their verdict found were false to his knowledge The cheques which were obtained in consequence of the representations were cheques made out by Mr Nicholls to the order of the company, and, therefore, Mr Nicholls intended that they should become the property of the company and that the company should receive the money from the bank Section 32 of the Larceny Act, 1916, provides
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> > 'Every person who by any false pretence - (1) with intend to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person shall be guilty of a misdemeanour '
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> The objection which was taken by counsel for the appellant with regard to the conviction for false pretences was that although the indictment alleged that the appellant obtained

the cheques, he did not, in fact, do so. The company obtained the cheques, and, therefore, the charge should have been laid that he obtained the cheques for the use of the company, not that he himself obtained them. It is a technical point and, in one sense, has no merits, but it is a good point. *R. v. Ball*, decided by the Court only on Feb. 19, 1951, had not been reported at the time when the commissioner summed up in this case. In *R. v. Ball* and in *R. v. Smith* the court said that 'obtained' means obtained the property and not merely the possession. If the cheque was made out, as it was in this case, to the company, the appellant and his co-prisoners might have been guilty of making false pretences with intent to defraud, but they did not do so with the intent of obtaining the cheques for themselves. They were obtaining them for the company, and, therefore, technically the indictment was wrong. Where a person makes a false pretence and obtains property for somebody else, the indictment must allege that, and not that he obtained it for himself. In this case the cheques were made out to the company and there is no doubt the company owned them. It was always intended that the company should be the owner. The only banking account into which the check could have gone was the banking account of the company. If, for instance, a director had endorsed them and paid them into his own account, he would have been guilty of a fraud on the company. Moreover, since A.L. Underwood v. Bank of Liverpool, no bank will now allow a cheque made out to a limited company to be paid into any account except that of the company. For these reasons, in the opinion of the court, the convictions of obtaining money by false pretences must be quashed, because the evidence did not support the charges.»

Mr. Hadjipetrou has argued that, whereas in Lurie's case the appellant could not possibly benefit personally with the amounts of the cheques issued by the complainant in the company's name, in the present case there is no evidence where the cash money went after it was paid by the complainant to the repondent. The evidence, counsel added, went only as far as showing that receipts were issued for such payments in the name of Kypros Kyprianou Estates Ltd., either by the respondent himself or by other employees of the aforesaid company. Counsel evidently meant that, for all we know, the respondent might have cheated his

employers and kept the money for himself, or at least it was possible for him, unlike the appellant in Lurie's case, to have done so. We do not agree with the submission that Lurie's case may be properly distinguished from the present case on the aforementioned ground. When the complainant in the present case was parting with his money he always intended that it should go to Kypros Kyprianou Estates Ltd., i.e. the company from which he had agreed to buy the building site. Receipts were issued to the complainant in the name of the aforesaid company in respect of each payment, either by the respondent himself or by some other employee of the company. It is not expected that other employees of the company would issue such receipts in respect of money received by the appellant but not accounted for by him. The only conclusion is that the respondent was intending that Kypros Kyprianou Estates Ltd. would be the owner of the money paid to him or to other employees of the company by the complainant as a result of the false statements held out to him by the respondent.

In its judgment the Court rightly pointed out that sections 297 and 298 of our Criminal Code reproduce substantially the provisions of section 32(1) of the English Larceny Act 1916. This being so, the word «obtains» in our section 298 should be construed in the manner in which it had been construed in the context of section 32(1) of the Larceny Act 1916, in the cases of *R. v. Lurie* (supra), *R. v. Ball* [1951] 2 K.B. 109 and *R. v. Smith* [1950] 2 All E.R. 679, where it was said that «obtained» means obtained the property and not merely the possession of the property. For this reason the charge of «obtaining» money by false pretences against the respondent in this case, in the way in which it was framed, was rightly dismissed by the trial Court because it was not supported by the evidence adduced by the prosecution, to which we have referred earlier, unless, of course, the second leg of the submission of counsel to the effect that the proviso to section 39 of Cap. 155 empowered the Court to convict the respondent without amending the charge, were right.

It becomes, therefore, pertinent to examine at this juncture, whether, in the circumstances of the instant case, the proviso to section 39 of Cap. 155, properly construed, could have saved the charge from dismissal on the ground of its aforesaid defectiveness. Section 39 of Cap. 155 which has no counterpart in any enactment regulating criminal procedure in England, contains provisions regarding the framing of charges and says that a charge

shall not be open to objection in respect of its form or contents if it is framed in accordance with the several requirements set out therein. At the end of the section there is a proviso to which counsel for the appellant attributed particular importance for the determination of this appeal. It reads as follows:

> «Provided that no error in stating the offence or the particulars required to be stated in the charge shall be regarded at any stage of the case as non-compliance with the provisions of this Law unless, in the opinion of the Court, the accused was in fact misled by such error.»

We agree with the submission of counsel for the appellant that the object of the proviso is to eliminate the possibility of unmerited acquittals because of, inter alia, some misdescription or inaccuracy in the particulars of the offence in the cases where it is shown that the accused is not thereby misled as to the nature of the case which he has to meet. For all we know, the proviso has not so far been the subject of analysis or in depth examination in any Cyprus decision. We are of the opinion, however, that its object is not to render inactive sections 83, 84 and 85 of Cap. 155 which regulate the amendment of a defective charge or information, or to provide a substitute for those sections.

Be that as it may, the proviso has no application in cases where, in the opinion of the Court, the accused was in fact misled by the error. In the judgment of the trial Court we could not trace a definite finding on the issue whether the respondent would be misled or not as to the case he had to meet, as a result of the sub-judice inaccuracy in the particulars of the offence. The attention of the trial Court had not been drawn by either counsel to the proviso and its repercussions on the defectiveness of the charge and there is nothing in the judgment to show that the Court had directed its mind to it. Counsel for the appellant submitted that, in the circumstances of the present case, the respondent could not possibly have been misled in any way if the trial Court had followed the above suggested course. Counsel for the respondent, on the other hand, suggested that the respondent would be misled in view of the fact that he had based his defence mainly, if not entirely, on the fact that, by the time the prosecution case closed, no evidence had been adduced to prove the allegation in the particulars of the offence that he had obtained any money for his own benefit. In view of this, counsel added, he had advised the

respondent not to give evidence in his own defence He further submitted that, in dismissing the charge, the trial Court expressly referred to the aforesaid defence of the respondent

We have considered the arguments of counsel and we have come to the conclusion that, although it does not seem that the trial judge directed its mind to the aforesaid proviso to section 39, there is a statement in the judgment which suggests that the Court felt that it would have been prejudicial and unfair for the respondent in view of his line of defence, if the nature of the case which he had to meet, as disclosed in the particulars of the offence, were to change The statement in the judgment of the trial Court, which is capable of such an interpetation, appears at p 106 of the record and reads as follows

«Αισθάνομαι ότι αφού δεν περιλαμβάνεται στο κατηγορητήριο σαφώς οτι ο Κατηγορούμενος υποκίνησε την καταβολή χρημάτων σε άλλο και ότι τα χρήματα χρησιμοποιήθηκαν από άλλο πρόσωπο ή εταιρεία και ιδίως εν όψει του γεγονότος ότι ολόκληρη η υπεράσπιση του στηρίχτηκε στο σημείο αυτό, ότι το Δικαστήριο δεν μπορεί να τον βρει ένοχο και συνεπώς ο Κατηγορούμενος θα πρέπει να απαλλαγεί.»

(«I feel that, since it is not clearly stated in the charge sheet that the accused instigated the payment of money to somebody else and that the money was used by another person or company and especially in view of the fact that his whole defence was based on that point, the Court cannot find him guilty and therefore the accused must be discharged»)

If, therefore, in the circumstances of the present case, the possibility of the respondent being misled as to the case he had to meet, could not be excluded, the Court could not, even if it were otherwise entitled to, convict the respondent without amending the charge, by applying the proviso to section 39 of Cap 155 as suggested by counsel for the appellant

The last question that remains to be examined is whether the omission of the trial Court to exercise at some stage or other of the proceedings, on its own motion, its power under the relevant

provisions of the Criminal Procedure Law, Cap. 155, and amend the defective charge, renders its verdict of acquittal wrong in law. Counsel for the appellant submitted that the trial Court could have amended the charge on its own motion, acting either under section 85(4) of Cap. 155 or under section 83 of the same Law.

The power of the trial Court under section 85(4)* of Cap. 155 to direct a count or counts to be added to the existing charge or information was considered in a number of decisions of this Court, one of the most recent being that of *Leonidou v. The Police* (supra). The power is exercised only at the conclusion of the trial and is expressly subject to the following conditions:

(i) it must be established by the evidence adduced that the accused has committed an offence or offences not contained in the charge or information;

(ii) the accused cannot be convicted of such offence or offences without amending the charge or information;

(iii) such offence or offences are not punishable with a greater punishment than the punishment to which he would be liable if he were convicted on the charge or information; and

(iv) the accused would not be prejudiced thereby in his defence.

Following the above analysis, the question to be determined is whether, in the circumstances of the present case, the Court could act under section 85(4) or not. The answer to the question is in the negative. In the first place, the evidence adduced in the present case does not establish that the respondent has committed an offence which is not contained in the charge It only establishes that, by his false pretences, he induced the complainant to part with his money in favour of Kypros Kyprianou Estates Ltd. Section 298 of our Criminal Code creates only one offence and provides

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* *«(4) If at the conclusion of the trial the Court is of opinion that it has been established by evidence that the accused has committed an offence or offences not contained in the charge or information and of which he cannot be convicted without amending the charge or information, and upon his conviction for which he would not be liable to a greater punishment than he would be liable to if he were convicted on the charge or information, and that the accused would not be prejudiced thereby in his defence, the Court may direct a count or counts to be added to the charge or information charging the accused with such offence or offences, and the Court shall give their judgment thereon as if such count or counts had formed a part of the original charge or information »*

two alternative ways of committing it. This single offence was contained in the charge against the present respondent. The charge was defective only because it provided the one alternative way of committing it which was not supported by the evidence adduced. Such defectiveness could have been cured by amendment under section 83 of Cap. 155 before the conclusion of the trial. Therefore, condition (i) above, did not apply and the Court could not have acted under section 85(4) of Cap. 155. There is, moreover, the requirement that the respondent ought not to be thereby prejudiced in his defence, which is set out in paragraph (iv) above. We have already dealt with this requirement when examining the applicability of the proviso to section 39 of Cap. 155. We would like, however, to add in this respect that one of the paramount duties of the trial judge is to secure to all litigants, especially to persons accused of crimes, a fair trial. One important aspect of this duty is to ensure that nothing is being done or said in a criminal trial that may prejudice an accused person in his defence. This paramount duty is cast upon our Courts by Article 30 of our Constitution and by Article 6 of the European Convention on Human Rights which has been ratified in Cyprus by the European Convention on Human Rights (Ratification) Law, 1962.

There is no doubt that the trial Judge had power to amend the charge since it had rightly appeared to him that same was defective. He could have exercised such power at any stage of the trial. The judge could have done so either at the instance of the prosecution or acting on his own motion. In either case the procedure laid down in section 84 of Cap. 155 ought to have been followed. Section 84 prescribes a procedure that eliminates the danger of any prejudice resulting to an accused person by reason of an amendment of the charge initiated or allowed by the Court. Counsel for the appellant does not dispute that, in the first place, it was the duty of the prosecution to have applied to the Court to amend the charge. Such duty arose the moment evidence was being adduced that, as a result of the respondent's false statements held out to the complainant, the latter was induced to part with his money for the benefit of Kypros Kyprianou Estates Ltd. This was not done. Was the trial Court under a similar duty? Does section 83 of Cap. 155, properly construed, cast a duty on the trial Court, as distinct from a mere right, to direct amendment of the charge which appears to it to be defective for one reason or another?

Does the failure or omission of the Court to exercise, on its own motion, its powers at the proper stage of the proceedings under section 83 of Cap. 155 render his verdict of acquittal bad in law? For all we know the questions have not been answered by this Court in any other case till today. No authority was cited to us covering the issue which we must presently determine. Having regard to the wording of section 83 and having in mind the adversary system of administration of justice prevailing in this country, we take the view that the object of section 83 was not to cast upon the trial Court the duty suggested by the appellant.

In the result, the appeal is dismissed.

Appeal dismissed.

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PART 2