1977 July 27

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

EVANGELOS A. CONSTANTINIDES,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No.* 3721).

Statute—Retrospective operation—Pending proceedings—Pending preliminary inquiry—Alteration of law before holding of—Committal for trial without a preliminary inquiry—Section 3 *of the Criminal Procedure (Temporary Provisions) Law,* 1974 (*Law* 42/74)—*No* 5 *vested right vested in appellant in relation to the holding of a preliminary inquiry—Said Law, being a statute relating only to matters of procedure, applicable to all proceedings including pending proceedings—Section* 92 *of the Criminal Procedure Law, Cap.* 155 *not repealed by above Law—Section* 10 (2) (*e*) *of the* 10 *Interpretation Law, Cap.* 1 *not applicable.*

Criminal Procedure (Temporary Provisions) Law, 1974 (*Law* 42 *of* 1974)—*Not contrary to Articles* 12 *and* 30 *of the Constitution or Article* 6 *of the European Convention on Human Rights—Whether committal for trial under s.* 3 *of the Law involves exercise* 15 *of discretion by trial Judge—Admissibility of evidence—A matter to be decided at the trial and not at committal—Sufficiency of summaries of evidence.*

Criminal Procedure—Conspiracy—Indictment for conspiracy—Inclusion of conspiracy count in an information containing counts for 20 *related substantive offences—Principles applicable.*

Criminal Procedure—Separate trial—Joint trial of conspiracy count with counts for substantive offences—Facts relating to conspiracy closely interwoven with remaining facts relating to the counts for the substantive offences.

25 *Criminal Law—Conspiracy to defraud—Section* 302 *of the Criminal*

Code, Cap. 154*—Scheme to defraud complainant by pretending to undertake establishment of mercantile business with him.*

Inferences—Drawn from primary facts—Conviction based thereon—Appeal—Approach of Court of Appeal.

Evidence—Further evidence on appeal—Principles governing reception and evaluation of by Court of Appeal. 5

Criminal Law—Conviction for forgery of cheque—Evidence concerning date of filling in of cheque contradicted by evidence adduced before Court of Appeal—It being a criminal case in which Court should feel certain beyond reasonable doubt about establishment of guilt of appellant , benefit of doubt given to him. 10

Criminal Law—Forgery—Blank cheques—Given with strictly limited authority—Such authority by far exceeded—Correctly found that the cheques have been forged—Sections 331 *and* 333(*c*) *of the Criminal Code, Cap.* 154. 15

Criminal Law—Joint offenders—Common purpose—Forging and uttering false documents—Committed by a group of persons in furtherance of a common purpose—Omission to refer expressly in the counts concerned to sections 20 *and* 21 *of the Criminal Code, Cap.* 154*—Not a material irregularity and has not in any way prejudiced the defence of the appellant—Proviso to section* 39 *of the Criminal Procedure Law, Cap.* 155. 20

Criminal Law—Forgery—Place of actus reus of—It could be inferred from surrounding circumstances.

Findings of fact—And credibility of witnesses—Appeals turning thereon—Approach of Court of Appeal—Notwithstanding certain weaknesses as regards a number of points in the evidence of two witnesses, these points not of such a really material nature as to lead to the conclusion that the trial Court was wrong in accepting them as credible witnesses—Whether the absence of a specific finding on the credibility of the defence witnesses, who were called to discredit the prosecution witnesses, a fatal flaw in the judgment of the trial Court. 25 30

Criminal Law—Sentence—Concurrent sentences of 7 *years imprisonment on each of six counts of forging and uttering of false documents—Conviction on two counts set aside. Probability that in assessing sentence in relation to all six counts Court influenced* 35

by the fact that amount involved in these two counts a considerable one—Sentence in remaining counts reduced.

The appellant was convicted by an Assize Court of the offences of conspiracy to defraud, of forgeries of cheques on three occasions, of uttering false documents, that is the forged cheques, on three occasions, respectively, of having obtained money by false pretences on three occasions and of attempting to obtain money by false pretences on another occasion and was sentenced to three years' imprisonment on the conspiracy count, on each of the otbaining money by false pretences counts and on the attempting to obtain money by false pretences count and to seven years' imprisonment on each of the forgery and uttering false documents counts, all sentences to run concurrently.

The charges arose out of the acquaintance of the appellant with a certain Zainah, a businessman from Kuwait, with whom appellant decided to establish businesses in Cyprus together with other persons, a certain Badawi from Egypt and a certain Halaf from Beirut.

The three cheques (Nos. 137909, 137916 and 137917), subject matter of the forgery and uttering charges, were given, together with other cheques, by Zainah to his son, named Marouan, who came to Cyprus in order to join the common enterprise. They were all signed blank cheques and were given to him with the authority to use them for his own personal expenses and those of the business ventures with the appellant but not to spend any money except with the approval of the appellant.

The case for the prosecution on the conspiracy count was that the appellant conspired between July 18 and September 5, 1973 with Badawi and Halaf, to defraud Zainah, by pretending that he would undertake to establish a mercantile business in Cyprus in partnership with Zainah, whereas, in fact, no such business was, or was intended to be established.

Regarding the above count the trial Court found that the evidence relating to the forgery of the above three cheques, and the cashing of two of them, plus an attempt to cash the third one which failed, established a scheme to defraud the complainant which was conceived at least by the appellant and Badawi and in which Halaf took part at some later stage; and

that as it appeared from the statement of account of Badawi with the Bank, he did not have enough money in Cyprus to contribute for the purposes of the intended business enterprises. Moreover the fact that the appellant apparently had no money at his disposal at all, and he did not make any attempt to mortgage his house in order to raise money for such purpose as he had promised Zainah, amounted to evidence proving that the appellant and Badawi were not acting genuinely when they were leading Zainah to believe that they were about to commence with him joint business enterprises in Cyprus.

Regarding the conviction of the appellant relating to the forgery of cheques Nos. 137909 and 137916 and to the related counts of uttering such cheques as forged documents and of obtaining money by false pretences (counts 3 to 8) the conviction of the appellant was based mainly on the view which the trial Court took of the main prosecution witnesses in this respect, namely the complainant Zainah and his son, on the one hand, and of the appellant, on the other hand.

Complainant's son testified that cheque No. 137909 was given by him to the appellant, as a blank cheque for the purpose of being used in order to pay the amount of C£300 customs duty in respect of goods which were expected from Egypt. It was, later on, found to have been filled in for the amount of C£3,300.

The son has, also, testified that he gave to the appellant cheques Nos. 137916 and 137917 in order to be used for the the purposes of buying furniture for a shop which was needed for the common enterprise. Cheque No. 137916 was filled in as payable to Badawi, for the amount of £8,000, and was cashed at the Barclays Bank.

Regarding cheque No. 137917, the son testified that the appellant told him that it was used in order to pay £225 for empty barrels but in fact it was filled in as payable to Badawi for the amount of C£50,000; it was not cashed due to lack of funds in the current account of the complainant Zainah.

And regarding the conviction of the appellant relating to the forgery and uttering of cheque No. 137917 and the Count of attempting to obtain money by false pretences (counts 9-11) the conviction was mainly based on the evidence of witness Christodoulou who was the person that filled in this cheque.

The date on this cheque was September 5, 1973, and this witness testified that when he filled in the cheque he wrote on it the date on which the appellant and Badawi visited him at his place of work at Berengaria village in the District of Limassol 5 and asked him to fill it in. From the contents of the appellant's passport, however, which was received in evidence during the hearing of the appeal with the consent of counsel for the respondent, it appeared clearly that the appellant was absent from Cyprus from September 3 to September 7, 1973, and that, 10 therefore he could not have been at Berengaria village.

Finally with regard to the conviction of obtaining money by false pretences (count 12), which concerned a cheque for an amount of £1500, allegedly required by the appellant for the payment of the customs duty for some goods imported for the 15 joint enterprise, the trial Court did not believe the version of the appellant, who denied that he has ever been given any money for this purpose by the complainant, and believed the version of the latter.

During the hearing of the appeal counsel for the appellant 20 applied that the secretary of the appellant (Vera Charalambous), who was a prosecution witness, but she was not called because she left Cyprus for abroad, before the trial, be called to give evidence as a witness before the Court of Appeal in view of the fact that she was not available at the trial and her evidence 25 might prove to be helpful to the appellant in relation to the above count.

On appeal against conviction and sentence the following issues have been raised by counsel for the appellant.

(1) Whether, in view of the fact that there were included in 30 the information a number of counts for substantive offences committed in the course of the alleged conspiracy and in view of the fact that the conspiracy count was based on the same facts which related to the said substantive offences, the prosecution wrongly included in the 35 information a count for conspiracy.

(2) Whether the trial Court erroneously refused to order a separate trial in the conspiracy count.

(3) Whether the appellant was rightly convicted on the conspiracy count (count 2).

(4) Whether, in view of the serious contradictions and improbabilities in the evidence of the main prosecution witnesses (Zainah and his son) and the view which the trial Court took on their credibility, and of the fact that the trial Court made no specific finding as to whether or not it believed the evidence of the witnesses called to destroy the credibility of the complainant's son, the conviction of the appellant relating to the forgery of cheques Nos. 137909 and 137916 and to the related offences (counts 3 to 8) should be upheld.

(5) Whether the appellant ought not to have been convicted of the charges relating to cheques Nos. 137909 and 137916 (counts 3 to 8) because it had not been established that specific instructions as to their use had been given by the complainant (Zainah) when such cheques were signed by him in blank.

(6) Whether, in view of the finding of the trial Court that the forging and the uttering of cheques Nos. 137909 and 137916, as well as the obtaining, by means of them, of money by false pretences, (counts 3 to 8) were offences which where committed by a group of persons, including the appellant, in furtherance of the common purpose of defrauding the complainant, the appellant could have been convicted of the offences of forgery and uttering a false document in the absence of any reference in the counts concerned to sections 20 and 21 of the Criminal Code, Cap. 154.

(7) Whether the conviction relating to the forging and uttering of cheque No. 137917 and the related conviction of attempting to obtain money by false pretences (counts 9–11) could be upheld in view of the fact that the evidence of witness Christodoulou, concerning the presence of the appellant at Berengaria village on September 5, 1973, was contradicted by appellant's passport.

(8) Whether the appellant could be convicted on the counts charging him with forgery in the absence of direct evidence that the actus reus of the offence of forgery occurred at Nicosia, or even within the territory of the Republic.

(9) Whether the evidence of appellant's secretary (Vera

Charalambous) should be heard by the Court of Appeal and whether the conviction on count 12 should be upheld.

(10) Whether the sentences were excessive.

5 In addition to the above issues counsel raised the issue of the committal of the appellant for trial, without a preliminary inquiry, under the Criminal Procedure (Temporary Provisions) Law, 1974 (Law 42/74) and submitted: (a) that as the preliminary inquiry had been fixed prior to the promulgation of the said 10 Law, such Law was wrongly applied retrospectively in relation to the appellant; (b) that the said Law contravened Articles 12 and 30 of the Constitution (c) that section 3 of Law 42/74 is so vague that it is not clear what a Judge, when applying it, is expected to do and, in particular, whether he has to exercise 15 any discretion before he proceeds to commit somebody for trial without a preliminary inquiry; (d) that the appellant was committed for trial on the basis of summaries of the substance of the statements of the prosecution witnesses which contained hearsay or otherwise inadmissible evidence; and (e) that the 20 said summaries were insufficient when compared with the length of the evidence given at the trial by each one of the prosecution witnesses concerned.

Held, on the issue relating to the committal for trial:

(1) That there was no substantive right vested in the appel-25 lant in relation to the holding of a preliminary inquiry, as Law 42/74 is a statute which relates only to matters of procedure and, that, accordingly, it was applicable to all proceedings including pending proceedings such as the case of the appellant.

(2) That Law 42/74 has not repealed section 92 of Cap. 30 155 but has only made provision for an alternative procedure in specified instances; and that, accordingly, section 10 (2) (e) of Cap. 1 is not directly applicable to a situation such as that in the present case.

(3) That it is not imperative by virtue of either Articles 12 35 and 30 of our Constitution or of the corresponding Article 6 of the European Convention on Human Rights to hold a preliminary inquiry in relation to all criminal cases, otherwise than as provided, from time to time, by relevant legislative provisions;

and that, accordingly, section 3 of Law 42/74 is not unconstitutional (In re *Ioannis Ktimatias* (1977) 6 J.S.C. 1043 *followed*).

(4) That irrespective of the fact that Law 42/74 could have been more elaborately drafted, and even assuming, without so deciding, that the District Judge who committed the appellant 5 for trial under section 3 of the said Law had to exercise a discretion to some extent, all prerequisites laid down in such section were duly satisfied and, that, accordingly, it was a proper case in which to commit the appellant for trial by an Assize Court without holding a preliminary inquiry. 10

Per Curiam: Law 42/74 is, actually, a special measure, introduced for a certain period of time, and we trust that if it is decided to retain it as a feature of our legislation then it will be formulated in a more elaborate manner (see, for example, in England, the relevant provisions of the Criminal Justice Act, 15 1967).

(5) That there is no merit in the contention that the summaries of the substance of the prosecution witnesses contained hearsay or otherwise inadmissible evidence, because the question of the admissibility of evidence need only have been decided on, 20 and for the purposes of, the trial.

(6) That in the circumstances of this case no prejudice, at all, has been suffered by the appellant because of any alleged disproportion, as regards length or otherwise, between the summary of the statement of any prosecution witness as com- 25 pared with the evidence which such witness gave at the trial or because in certain summaries there was made reference to documents, copies of which were not attached to such summaries but were produced for the first time at the trial.

(7) That in the circumstances of this case the appellant 30 has not been prejudiced, in any way, in the conduct of his defence at the trial before the Assize Court and he has not, in any other manner, been deprived of a fair trial, due to the fact that no preliminary inquiry was held.

Held, on issues Nos. 1, 2 *and* 3: 35

(1) (*After stating the principles relating to the inclusion of a count for conspiracy in an information containing counts for related substantive offences*—see pp. 359–60 *post*). That there

has not resulted any irregularity or any unfairness or otherwise any prejudice to the appellant due to the inclusion in the information of a conspiracy count (p. 360 *post*).

5 (2) That the trial Court rightly refused the application for a separate trial of the conspiracy count because the facts of this case relating to the conspiracy are closely interwoven with the remaining facts of the case which relate to the counts for the substantive offences.

10 (3) That having regard to the relevant evidence as a whole and to the fact that the conviction of the appellant in the conspiracy count was based to a great extent on inferences drawn from primary facts and bearing in mind the principles on which this Court acts in appeals against convictions based on such inferences, it was properly open to the trial Court to conclude,

15 with the certainty required in a criminal case, that the appellant, Badawi and Halaf had conspired to defraud the complainant Zainah, and that, accordingly, this Court, is not prepared to interfere on appeal with the conviction of the appellant on the conspiracy count (see, *inter alia, Hji Costa* (*No.* 2) v. *The Re-*

20 *public* (1965) 2 C.L.R. 95 at p. 103).

Held, on issue No. 4:

That this Court does not interfere with verdicts of trial Courts in criminal cases which depend on findings concerning the credibility of witnesses unless it is presuaded that there do exist good

25 grounds entitling it to do so (see *Orphanou* v. *Police* (1973) 2 C.L.R. 260); that notwithstanding the fact that there are, indeed, certain weaknesses as regards a number of points in the evidence of the complainant and his son, these points are not of such a really mate.ial nature as to lead this Court to the conclusion

30 that the trial Court was wrong in accepting them as credible; and that even if the trial Court has made no specific finding as to whether or not it believed the evidence of the witnesses called to destroy the credibility of the complainant's son, this is not a fatal flaw in the judgment of the trial Court, because it is obvious

35 from such judgment, if read as a whole, that the trial Court considered the credibility of the son in the light of all the evidence that had been adduced, even if it did not specifically deal with the evidence of the aforementioned witnesses, which it obviously did not find sufficient to discredit him.

Held, on issue No. 5:

That the authority to use the blank cheques was strictly limited, and there can be no doubt, on the material before the Court, that such authority has been exceeded by far; and that, accordingly, it was correctly found on the basis of sections 331 and 333(c) of the Criminal Code, Cap. 154 that cheques Nos. 137909 and 137916 had been forged (*R.* v. *Butler*, 38 Cr. App. R. 57 *distinguished*). 5

Held, on issue No. 6:

That section 20 of Cap. 154 does not create by itself any offence, but it merely lays down in what way a person can become a particeps criminis; that section 21 deals with the responsibility for offences committed jointly in furtherance of a common purpose and provides that each participant is considered to have committed the offence which is the outcome of such furtherance; and that, accordingly, the omission to refer expressly in the counts concerned to sections 20 and 21 of Cap. 154 is not, at all, a material irregularity, nor has it prejudiced, in any way the defence of the appellant (see, also, proviso to section 39 of Cap. 155). 10 15 20

Held, on issue No. 7:

That this being a criminal case in which this Court should feel certain beyond reasonable doubt about the establishment of the guilt of the appellant, it has decided that the safest course would be to give to the appellant the benefit of the doubt arising from the correlation between the date on the cheques concerned and the period during which, according to his passport, he was absent from Cyprus, and to allow his appeal against the conviction for forgery (count 9) as wells as against the conviction on the related counts (Nos. 10 and 11) of uttering a false document and of attempting to obtain money by false pretences, with the result that he is discharged on such counts and the sentence passed upon him in connection with them are set aside. 25 30

Held, on issue No. 8: 35

That the question of where the actus reus of forgery occurred was a matter not having, necessarily, to be proved by means of direct evidence; and that it could be inferred, as it was in-

ferred by the trial Court, beyond reasonable doubt, from all the surrounding circumstances—p. 377 *post*. (See *Mancini* v. *Director of Public Prosecutions*, 28 Cr. App. R. 65 at p. 77).

Held, on issue No. 9:

5 1. (*After stating the principles governing the reception of further evidence on appeal*—vide pp. 364–69 *post*). That due to the circumstances which resulted in the said witness (Vera Charalambous) not being available to give evidence at the trial as a witness for the prosecution, or to be, at least, tendered then 10 for cross-examination by counsel for the appellant, this Court has reached the conclusion that it should receive her evidence during the hearing of this appeal in order to exclude any possibility of injustice occurring. (See s 146(b) of Cap. 155 and s. 25(3) of Law 14 of 1960).

15 2. (*After stating the principles governing evaluation of fresh evidence by the Court of Appeal*—pp. 369–70 *post*). That as the said witness frankly admitted that she is a close personal friend of the appellant, she is not a credible witness at all, and that she gave evidence with the sole purpose of trying to be of assist-20 ance to the appellant; and that, accordingly, there is no reason, on the basis of her evidence, to interfere with the findings of the trial Court which led to the conviction of the appellant on the relevant count (count 12) and that such conviction will be upheld.

25 *Held, in the result, with regard to the conviction on counts* 3 *to* 8:

That this Court has not been satisfied by counsel for the appellant that the guilt of his client has not been established in relation to counts 3 to 8 with the certainty required for the 30 purposes of a conviction in criminal proceedings and that, accordingly, the appeal against his conviction in respect of these counts has to be dismissed.

Held, on issue No. 11 (*the appeal against sentence*):

That though, in view of the gravity of the offences concerned 35 and the circumstances in which they were committed, the sentences imposed on appellant are not manifestly excessive or wrong in principle even if any mitigating circumstances personal to the appellant were to be taken fully in his favour, concurrent

sentences of seven years' imprisonment were imposed not only on the counts of forging and uttering cheques Nos. 137909 and 137916 (counts Nos. 3,4, 6 and 7) but also on the counts of forging and uttering cheque No. 137917 (count Nos. 9–10) in relation to which the conviction of the appellant has been set 5 aside; that it is probable that the trial Court in assessing the proper punishment in relation to the forging and uttering of the three cheques, to which the above six counts relate, was influenced by the fact that one of such cheques, No. 137917, was forged so as to be made to appear to be good for the pay- 10 ment of the considerable amount of C£50,000; that as in relation to counts 9 and 10, regarding the said cheque No. 137917 the appellant's conviction has been set aside and it is not really certain that the trial Court would have imposed sentences of seven years' imprisonment on counts 3, 4, 6 and 7 had it not 15 decided to convict the appellant and punish him with sentences of the same duration in respect of counts 9 and 10, the better course in the peculiar situation with which this Court is faced in this case, is to lean towards leniency and reduce to concurrent terms of five years' imprisonment, the sentences which were 20 passed upon the appellant in respect of counts 3, 4, 6 and 7 in relation to which his conviction has been upheld.

Appeal against conviction and sentence partly allowed.

Per Curiam: It is most desirable, for the purpose of ensuring 25 the as speedy as possible administration of justice in a case of this nature, that counsel should limit themselves to such grounds of appeal as they appear to be really raising issues of substance, and should avoid making far-fetched submissions.

Cases referred to: 30

The Colonial Sugar Refining Company, Limited v. *Irving* [1905] A.C. 369 at pp. 372–373;

Attorney-General v. *Vernazza* [1960] 3 All E.R. 97 at p. 100;

In re Ioannis Ktimatias (1977) 6 J.S.C. 1043 (to be reported in (1977) 2 C.L.R.); 35

R. v. *Jones and Others*, 59 Cr. App. R. 120 at p. 124;

Hji Costa (No. 2) v. *The Republic* (1965) 2 C.L.R. 95 at p. 102;

Polycarpou and Another v. *Republic* (1967) 2 C.L.R. 198 at p. 203;

Simadhiakos v. *The Police*, 1961 C.L.R. 64;

Arestidou v. *The Police* (1973) 2 C.L.R. 244;

"*Declaration of Legitimacy of* 1926 *Dispute*", Solicitors' Journal, 1977, Vol. 121 pp. 233–234;

R. v. *Parks* [1961] 3 All E.R. 633 at p. 534;

5 *Stafford and Another* v. *Director of Public Prosecutions* [1973] 3 W.L.R. 719 at pp. 723–725, 737–738;

R. v. *Lattimore and Others,* 62 Cr. App. R. 53 at p. 56;

R. v. *Melville* [1976] 1 W.L.R. 181 at p. 186;

The Queen v. *Bateman,* 1 Cox C.C. 186 at pp. 187;

10 *R.* v. *Butler,* 38 *Cr. App. R.* 57 at pp. 61–62;

Mancini v. *Director of Public Prosecutions,* 28 Cr. App. R. 65 at p. 77;

Orphanou v. *The Police,* (1973) 2 C.L.R. 260 at p. 261;

Soulis v. *The Police* (1973) 2 C.L.R. 68 at p. 70;

15 *Charalambides* v. *HadjiSoteriou and Others* (1975) 1 C.L.R. 269 at p. 277.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Evangelos A. Constantinides who was convicted on the 2nd April, 1976, at
20 the Assize Court of Nicosia (Criminal Case No. 16233/74) on one count of the offence of conspiracy to defraud, contrary to section 302 of the Criminal Code Cap. 154, on three counts of the offence of forgeries of cheques, contrary to section 331 of Cap. 154, on three counts of the offence of uttering false docu-
25 ments, contrary to section 339 of Cap. 154, on three counts of the offence of obtaining money by false pretences, contrary to section 298 of Cap. 154, and on one count of the offence of attempting to obtain money by false pretences, contrary to sections 298 and 366 of Cap. 154 and was sentenced by Deme-
30 triades, P.D.C., Papadopoulos, S.D.J. and Nikitas, D.J. to three years' imprisonment on the conspiracy to defraud count, on each of the obtaining money by false pretences counts and on the attempting to obtain money by false pretences count and to seven years' imprisonment on each of the forgery and
35 uttering false documents counts, all sentences to run concurrently.

A. Pandelides, for the appellant.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant was convicted on April 2, 1976, by an Assize Court, of the offences of conspiracy to defraud, contrary to section 302 of the Criminal Code, Cap. 154 (on count 2 in the information), of forgeries of cheques on three occasions, 5 contrary to section 331 of Cap. 154 (on counts 3, 6 and 9), of uttering false documents, that is the forged cheques, on three occasions, respectively, contrary to section 339 of Cap. 154 (on counts 4, 7 and 10), of having obtained money by false pretences on three occasions, contrary to section 298 of Cap. 154 (on 10 counts 5, 8 and 12), as well as of attempting to obtain money by false pretences (on count 11) contrary to sections 298 and 366 of Cap. 154.

He was sentenced on April 5, 1976, to three years' imprisonment on count 2, to seven years' imprisonment on each of the 15 counts 3, 4, 6, 7, 9 and 10 and to three years' imprisonment on each of the counts 5, 8, 11 and 12; all sentences to run concurrently.

The appellant has appealed both against conviction and sentence. 20

The notice of appeal, as eventually supplemented by further grounds of appeal, contains thirty-two grounds and, consequently, the hearing of the appeal had to be a rather protracted one, lasting ten days, and judgment had to be reserved until today. We take, therefore, this opportunity of pointing out 25 that it is most desirable, for the purpose of ensuring the as speedy as possible administration of justice in a case of this nature, that counsel should limit themselves to such grounds of appeal as they appear to be really raising issues of substance, and should avoid making far-fetched submissions; it is to be 30 noted that in this case counsel for the appellant abandoned in the end some of the grounds of appeal and we must say that we do think that he has adopted, indeed, a correct course by doing so.

In dealing with the appeal against conviction it is convenient 35 to examine first those grounds of appeal (Nos. 1, 7, 13, 14 and 23) which relate to the committal of the appellant for trial by the Assize Court:

It is common ground that the appellant was committed for

trial on November 17, 1975, without a preliminary inquiry having been held; such an inquiry had been fixed for July 16, 1974, but it was not, eventually, held, because there intervened, in the meantime, the promulgation of the Criminal Procedure
5 (Temporary Provisions) Law, 1974 (Law 42/74), on September 27, 1974, and the appellant was committed for trial without a preliminary inquiry, under the provisions of section 3 of such Law.

Counsel for the appellant has contended that, as in this
10 case a preliminary inquiry had been fixed prior to the promulgation of Law 42/74, such Law was wrongly applied retrospectively in relation to his client; and, he has referred us, in this respect, to the case of *The Colonial Sugar Refining Company Limited* v. *Irving* [1905] A.C. 369; the headnote of the report of
15 this case reads as follows:-

> " Held, that, although the right of appeal from the Supreme Court of Queensland to His Majesty in Council given by the Order in Council of June 30, 1860, has been taken away by the Australian Commonwealth Judiciary Act.
> 20 1903, s. 39, sub-s. 2, and the only appeal therefrom now lies to the High Court of Australia, yet the Act is not retrospective, and a right of appeal to the king in Council in a suit pending when the Act was passed and decided by the Supreme Court afterwards was not taken away."

25 In that case Lord Macnaghten said (at pp. 372-373). in delivering the judgment of the Privy Council in England:-

> " As regards the general principles applicable to the case there was no controversy. On the one hand, it was not disputed that if the matter in question be a matter of pro-
> 30 cedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act. it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day,
> 35 the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, Was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it
> 40 a mere matter of procedure? It seems to their Lordships

that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested."

The case of *Colonial Sugar Refining Company, supra*, was referred to by the House of Lords in England in *Attorney-General* v. *Vernazza*, [1960] 3 All E.R. 97, in which Lord Denning said (at p. 100):-

" If the effect of the new Act is to prevent him from continuing those proceedings to their ultimate conclusion, then it may be said to be a 'retrospective' Act, at any rate in the sense in which Lord Blackburn once had occasion to use the word 'retrospective'. But whether this is a proper use of the word 'retrospective' or not, it is of little moment; because the principles to be applied are not in doubt. If the new Act affects the respondent's substantive rights, it will not be held to apply to proceedings which have already commenced, unless a clear intention to that effect is manifested: see *Colonial Sugar Refining Co.* v. *Irving*, [1905] A.C. 369. But if the new Act affects matters of procedure only, then, *prima facie*, it applies to all actions, pending as well as future; for, as Lord Blackburn said:

> ' Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be',

see *Gardner* v. *Lucas*, [1878], 3 App. Cas. at p. 603."

In our view there was no substantive right vested in the appellant in relation to the holding of a preliminary inquiry, as Law 42/74 is a statute which relates only to matters of procedure and, therefore, it was applicable to all proceedings, including pending proceedings such as the case of the appellant.

Counsel for the appellant has referred us, also, in connection

with his above submission, to section 10 (2) (e) of the Interpretation Law, Cap. 1, which reads as follows:-

"10. (1) ....

(2) Where a Law repeals any other enactment, then, unless the contrary intention appears, the repeal shall not –

....

5 (e) affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid,

and any such investigation, legal proceedings, or remedy 10 may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Law had not been passed."

In our opinion, Law 42/74 has not repealed section 92 of the Criminal Procedure Law, Cap. 155, which provides about the 15 holding of a preliminary inquiry in certain cases, but has, only, made provision for an alternative procedure in specified instances; therefore, section 10 (2) (e) of Cap. 1 is not directly applicable to a situation such as that in the present case; but even if it were so applicable it should be noted that it would 20 only have enabled the already fixed, prior to Law 42/74, preliminary inquiry to be proceeded with, if such a course had been deemed to be expedient, and cannot be construed as rendering imperative the holding of such preliminary inquiry.

Counsel for the appellant has submitted that section 3 of 25 Law 42/74, contravenes Articles 12 and 30 of the Constitution, because by depriving an accused person of the stage of the preliminary inquiry it affects the right of such person to a fair trial, inasmuch as it deprives him of the opportunity to cross-examine prosecution witnesses called at the preliminary inquiry, 30 of the opportunity to put forward his own version and to call witnesses in his own defence at such inquiry,and of the possibility to be discharged without being committed for trial. Moreover, according to counsel for the appellant, when a preliminary inquiry is not held an accused person is deprived of the possi- 35 bility of tying down the prosecution on the basis of evidence adduced by it on oath, before the trial, at the inquiry; and, also, that without such an inquiry there cannot be put in at the

trial the deposition of a witness, which would be taken at the inquiry, in case he is absent at the time when the trial is held.

In a judgment given by one of us recently *In the matter of an application by Ioannis Ktimatias for an order of Certiorari* (No. 3/77, decided on May 5, 1977, and not reported yet*) the view was expressed, to which we all subscribe, that it is not imperative by virtue of either Articles 12 and 30 of our Constitution or of the corresponding Article 6 of the European Convention on Human Rights—which has been ratified by Cyprus—to hold a preliminary inquiry in relation to all criminal cases, otherwise than as provided, from time to time, by relevant legislative provisions.

As was stressed by counsel for the respondent in the present case, if the absence of a preliminary inquiry was treated as resulting in an unfair trial then all summary trials, and, in particular, those for serious offences, would have been precluded by the aforementioned provisions of our Constitution and the said Convention, as being incompatible with them.

We, therefore, cannot agree with counsel for the appellant that section 3 of Law 42/74, is unconstitutional.

Before concluding this part of our judgment, dealing with the above issue, we might point out that, of course, if a preliminary inquiry is held in a certain case then the guarantees for a fair trial contained in Articles 12 and 30 of our Constitution, and Article 6 of the European Convention on Human Rights, should be adhered to because, as pointed out by Jacobs on the European Convention on Human Rights (at p. 83), "the object of Article 6 is to protect a person throughout the criminal process".

It has, also, been contended by counsel for the appellant that section 3 of Law 42/74 is so vague that it is not clear what a Judge, when applying it, is expected to do and, in particular, whether he has to exercise any discretion before he proceeds to commit somebody for trial without a preliminary inquiry.

We agree that Law 42/74 could have been more elaborately drafted; it is, actually, a special measure, introduced for a certain period of time, and we trust that if it is decided to retain it as a feature of our legislation then it will be reformulated in

* Now reported in (1977) 6 J.S.C. 1043; and will be reported in (1977) 2 C.L.R.

a more elaborate manner (see, for example, in England, the relevant provisions of the Criminal Justice Act, 1967). Irrespective, however, of the foregoing, and even assuming, without so deciding, that the District Judge who committed the appellant for trial under section 3 of the said Law had to exercise a discretion to some extent, we are of the opinion that all the prerequisites laid down in such section were duly satisfied and that it was a proper case in which to commit the appellant for trial by an Assize Court without holding a preliminary inquiry. It is to be borne in mind, further, in this respect, that at the stage when the appellant was committed for trial no application was made on his behalf that a preliminary inquiry should take place and no objection was taken that this was not a proper case in which he could be committed without such an inquiry.

Nor have we been satisfied that, in the circumstances of the present case, the appellant has, as contended by his counsel, been prejudiced, in any way, in the conduct of his defence at his trial before the Assize Court, or has, in any other manner, been deprived of a fair trial, due to the fact that no preliminary inquiry was held.

It was, indeed, a complicated case, but the appellant was given full latitude at the trial to cross-examine the witnesses for the prosecution and to adduce all the evidence that his counsel deemed necessary to call in support of his defence.

Another contention of counsel for the appellant has been that his client was committed for trial on the basis of summaries of the substance of the statements of the prosecution witnesses which contained hearsay or otherwise inadmissible evidence. We find no merit, at all, in this contention, because the question of the admissibility of evidence need only have been decided on, and for the purposes of, the trial.

The appellant's counsel has complained further that the said summaries were insufficient when compared with the length of the evidence given at the trial by each one of the prosecution witnesses concerned. We do not agree that there existed, as a matter of substance, any material disproportion, as regards length or otherwise, between the summary of the statement of any prosecution witness, which was furnished to the appellant when he was committed for trial, as compared with the evidence which such witness gave at the trial before the Assize Court;

and it is to be observed, in this respect, that the evidence of some prosecution witnesses appears to cover a considerable part of the record of the trial, not because such witnesses stated when examined-in-chief substantially more than what could be foreseen that they would state from the summaries of their statements which were furnished to the appellant when he was committed for trial by the Assize Court, but because they were subjected to very lengthy cross-examination by defending counsel. We are quite satisfied that no prejudice, at all, has been suffered by the appellant in this respect.

It is true that in the aforementioned summaries of the statements of prosecution witnesses there was made reference to documents, copies of which were not attached to such summaries, and that these documents were produced for the first time at the trial. We do not agree, however, with counsel for the appellant that this is a valid reason for finding that either the committal of the appellant for trial by the Assize Court was invalid, or that his conviction should be set aside, because counsel for the appellant was free to ask, before the trial, to inspect such documents, or to be given copies thereof, and he has not availed himself of such a facility. Nor has he objected at any stage at the trial that he was prejudiced by the fact that any document, which was produced by the prosecution, had not been made available to him beforehand.

It is convenient, at this stage, to summarize the undisputable salient facts of this case:

In June 1972, a certain Halil Zainah (Prosecution Witness 3), a businessman from Kuwait, came to Cyprus as a tourist and he stayed at the Lido Hotel, where he met the appellant; they soon became close friends.

Zainah left Cyprus on June 29, 1972, but before doing so he expressed the wish to be allowed to reside permanently in Cyprus and to secure Cypriot nationality, and the appellant started taking steps to help him achieve these objects.

Zainah returned to Cyprus on November 20, 1972, and he stayed again at the Lido Hotel; on this occasion he decided to explore the possibility of starting a business in Cyprus and he was introduced accordingly to an advocate, Demetrios Lambides (P.W.11). Zainah then left Cyprus on December 19, 1972, and

about three months later the appellant visited Kuwait where he stayed for a short time as the guest of Zainah.

Zainah returned to Cyprus on May 23, 1973, accompanied by his wife, and he moved into a house which was found for 5 him by the appellant. On this occasion Zainah brought with him £10,000 by way of cheques and about £1,500 in cash. On the advice of the appellant he opened two accounts with Barclays Bank in Nicosia, the one being a savings account in which he deposited about C£8,000, and the other a current account in 10 which he deposited C£600.

The appellant and Zainah used to meet regularly and one day they met an Egyptian named Mohamed Badawi.

The three of them started discussing the possibilities of establishing businesses in Cyprus and a few days later they 15 were joined here by a partner of Badawi, from Beirut, named Shahada Halaf, who came to Cyprus accompanied by an employee of his named Mahmoud Gul.

It was decided to start manufacturing animal fodder, as well as bottles; for the former industry they had to start collecting 20 whatever was thrown away from slaughter-houses and for the latter purpose they needed supplies of broken bottles.

They estimated that they would need a capital of between twenty and forty thousand pounds and it was decided that the appellant, who was, by occupation an electrician, and had con-25 nections in Cyprus, would manage the enterprises.

In the course of all these preparations the appellant, Zainah and Badawi visited advocate Lambides in order to seek his assistance in certain respects; Halaf had left Cyprus prior to that.

30 Zainah, Badawi and the appellant started meeting manufacturers of soft drinks and purchasing from them broken bottles, which were paid for by Zainah out of his own money; two building sites opposite the Coca-cola factory in Nicosia were leased by them in order to store there the broken bottles and a 35 lorry was purchased in relation to which Badawi paid C£700 by way of an advance against its price.

Then Zainah arranged to bring from Kuwait a further amount

of £10,000, which he deposited in his current account with the Barclays Bank.

On the suggestion of Badawi, who said that he had stored in his warehouses in Beirut plastics and leather, it was decided to bring certain quantities of these goods in order to sell them in Cyprus, and when they arrived at Famagusta, in the name of the appellant, they were cleared through the customs, were transported to Nicosia and were stored at first in the garage of the house of the appellant.

On June 20, 1973, the son of Zainah, Marouan Zainah (P.W.7), arrived in Cyprus and it was decided that he was to be employed in the common enterprises. He went back to Kuwait and returned with his wife and child on July 11, 1973.

Zainah left Cyprus on July 31, 1973; before doing so he gave to Marouan ten signed blank cheques, which he authorized him to use for his own personal expenses and those of the business ventures with the appellant and the others; Zainah told Marouan not to spend any money except with the approval of the appellant.

Zainah returned to Cyprus on August 24, 1973, and left three days later. During his short stay here he asked the appellant if everything was in order and he was assured that this was so. The appellant told him that he should transfer into his current account the amount which he had in his savings account and Zainah visited the Barclays Bank accompanied by the appellant and gave instructions to that effect. Before doing so he gave to his son, in the presence of the appellant and Badawi, another sixteen blank cheques signed by him.

Before the departure of Zainah from Cyprus the appellant leased in his own name a field at Kythrea, for a period of ten years, where it was decided that they would build the factory for the production of animal fodder.

In September 1973, after an incident between Marouan and a cabaret artist named Shadia Shoubert, alias Mona, as a result of which the police were, eventually, called in, Marouan had to leave with his family for Syria.

According to a conspiracy count—count 2—the appellant conspired between July 18 and September 5, 1973, in Nicosia,

with Badawi and Halaf, to defraud Zainah, by pretending that he would undertake to establish a mercantile business here in Cyprus in partnership with Zainah, whereas, in fact, no such business was, or was intended to be, established.

5 Counsel for the appellant has argued that the prosecution wrongly included in the information a count for conspiracy, since there were included in the same information a number of counts for substantive offences committed in the course of the alleged conspiracy, and the count for conspiracy was based, as 10 he claimed, on the same facts which related to the said substantive offences.

The principles relating to the inclusion of a count for conspiracy in an information containing counts for related substantive offences are set out in, *inter alia*, Archbold's Pleading, 15 Evidence and Practice in Criminal Cases, 39th ed., pp. 1686–1687, para. 4073. It is true that "as a general rule where there is an effective and sufficient charge of a substantive offence, the addition of a charge of conspiracy is undesirable"; but there are exceptions to such rule, such as "cases of complexity in 20 which the interests of justice can be served by presenting to a jury an overall picture and in which that cannot be done by charging a relatively small series of substantive offences" and "where charges of substantive offences do not adequately represent the overall criminality".

25 In *R.* v. *Jones and Others*, 59 Cr. App. R. 120, James L.J. stated the following (at p. 124):-

> " The question whether a conspiracy charge is properly included in an indictment cannot be answered by the application of any rigid rules. Each case must be consi- 30 dered on its own facts. There are, however, certain guiding principles. The offences charged on the indictment should not only be supported by the evidence on the depositions or witness statements, but they should also represent the criminality disclosed by that evidence. It is not desirable 35 to include a charge of conspiracy which adds nothing to an effective charge of a substantive offence. But where charges of substantive offences do not adequately represent the overall criminality, it may be appropriate and right to include a charge or conspiracy.

The indictment ought to include those charges which make for simplification of the issues and which avoid complexity and the need for multiplicity of counts. In some cases a conspiracy count may involve complexity which counts for substantive offences would avoid; in other cases a charge of conspiracy may be the simpler way of presenting the case to the jury because the alternative would be to proceed on a substantial number of charges of substantive offences. A further guiding principle is that a count for conspiracy should not be included with counts charging substantive offences if the inclusion will result in unfairness to the defence. This is an aspect which has to be weighed with the other considerations."

With the foregoing in mind, we feel that we are not satisfied that there has resulted any irregularity or any unfairness or otherwise any prejudice to the appellant due to the inclusion in the information of a conspiracy count. It is to be noted that this count was necessary in order to place before the trial Court the picture of the overall criminality of the conduct of the appellant and his co-conspirators, one of whom Shahada Halaf was not mentioned in the information in relation to any one of the other counts for the substantive offences, and, therefore, it can be rightly said that the conspiracy count was not based on exactly the same facts as those which related to the counts for the substantive offences charged by means of the same information.

Nor do we find well-founded the complaint of counsel for the appellant that the trial Court refused to order a separate trial of the appellant on the count of conspiracy. In our opinion, the facts of this case which relate to the conspiracy are closely interwoven with the remaining facts of the case which relate to the counts for the substantive offences; so, rightly the trial Court refused the application for a separate trial, as aforesaid. It is to be borne in mind, in this respect, that in its relevant ruling the trial Court stated that it would be guided by the need for great caution in order to ensure that no evidence would be given due to the inclusion of the conspiracy count which would be inadmissible and, also, that care was required to keep all the several issues perfectly clear.

The trial Court found that the appellant, Badawi and Halaf

conspired together to defraud the complainant, as charged in count 2 of the information.

In this respect it found that evidence regarding the forgery of cheques Nos. 137909, 137916 and 137917 of the complainant, 5 and the cashing of two of them plus an attempt to cash the third one which failed—(and to such matter we shall refer later on in this judgment)—established a scheme to defraud the complainant which was conceived at least by the appellant and Badawi and in which Halaf took part at some later stage.

10 Moreover the trial Court took the view that the fact that, as it appeared from the statement of account of Badawi with Barclays Bank, he did not have enough money in Cyprus to contribute for the purposes of the intended business enterprises, and the fact that, also, the appellant apparently had no money 15 at his disposal at all, nor did he make any attempt to mortgage his house in order to raise money for such purpose as he had promised Zainah, amounted to evidence proving that the appellant and Badawi were not acting genuinely when they were leading Zainah to believe that they were about to commence 20 with him joint business enterprises in Cyprus.

Another part of the evidence which the trial Court found as significant in relation to the guilt of the appellant on count 2, concerning the conspiracy, was that which related to his efforts to make Marouan, the son of the complainant, leave Cyprus 25 when he no longer needed him in order to obtain from him cheques which had been signed in blank by his father Zainah; this is the evidence which relates to the entanglement of Marouan with a cabaret girl, because of which he was made eventually to leave this country.

30 Furthermore, the trial Court found to be part of what it described as the "scenario of perpetrating the fraud" certain things done by the appellant and his co-conspirators, such as bying broken bottles, leasing building sites for storing the bottles, the purchase of a lorry, the renting of a shop and furni-35 shing it to be used for the purpose of the joint business ventures.

Having reviewed all the relevant evidence as a whole, we have come to the conclusion that it was properly open to the trial Court to conclude, with the certainty required in a criminal case, that the appellant, Badawi and Halaf had conspired to

defraud the complainant Zainah, and we are not, therefore, prepared to interfere on appeal with the conviction of the appellant on count 2.

In upholding the conviction of the appellant on count 2, which is a conviction based to a great extent on inferences drawn from primary facts, we have borne duly in mind that we were in as good a position as the trial Court to draw inferences from such facts and there was nothing to prevent us from reaching different conclusions than those drawn by the trial Court, with the result that the appellant would have been acquitted on count 2 had we been persuaded that the inferences drawn, in this respect, by the trial Court were not warranted beyond reasonable doubt by the evidence before it; but, we have not been so persuaded and the onus of doing so was on the appellant who has failed to discharge it (see, *inter alia*, *Hji Costa (No 2)* v. *The Republic*, (1965) 2 C L.R. 95, 102, and *Polycarpou and Another* v. *The Republic*, (1967) 2 C.L.R. 198, 203).

It has been the case for the prosecution that one of the ten blank cheques given initially by Zainah to Marouan, No. 137909, as well as two of the sixteen blank cheques given by Zainah to Marouan on a later occasion, Nos. 137916 and 137917, were forged by the appellant, who uttered and cashed cheques Nos. 137909 and 137916 and appropriated the proceeds, whilst cheque No. 137917 was not cashed when presented at the Barclays Bank for payment as there were no funds in the account of Zainah to meet it.

Counts 3, 4 and 5 relate to cheque No. 137909, which was dated August 6, 1973, and which was made payable to Gul, for the sum of C£3,300, having previously been signed, as already stated, as a blank cheque by Zainah; it was allegedly forged with the complicity of the appellant and was cashed on August 7, 1973, at the Barclays Bank in Nicosia.

Counts 6, 7 and 8 relate to cheque No 137916, which was dated September 1, 1973, and was made payable to Badawi, for the sum of C£8,000, after it had been signed in blank by Zainah. It was allegedly forged, again with the complicity of the appellant, and was cashed on September 1, 1973, at the said bank.

Counts 9, 10 and 11 relate to cheque No. 137917, which was

dated September 5, 1973, and was also made payable to Badawi, for the sum of C£50,000 having again been signed in advance as a blank cheque by Zainah. It was allegedly, also, forged with the complicity of the appellant on September 5, 1973, 5 and was presented to the said bank in an effort to be cashed, on September 20, 1973, but it was not cashed by the bank because of the lack of the necessary funds in the current account of Zainah. That is why in respect of this cheque the appellant was charged only with an attempt to obtain money by false 10 pretences.

Count 12 charged the appellant with obtaining, on July 18, 1973, in Nicosia, the amount of C£1,500 from the complainant Zainah by false pretences to the effect that this money was needed for the clearance of goods—plastic and leather—from 15 the Famagusta Customs.

Concerning count 12 the complainant Zainah testified that the appellant had told him that Badawi was sending plastic and leather goods from Beirut, and that they had to pay C£1,500 for customs duty. As a result, Zainah signed a cheque, No. 20 081844, for the said amount on July 18, 1973, payable to "self" and gave it to the appellant. He did not fill in the cheque himself, but according to his evidence it was filled in by either the appellant or his secretary Vera Charalambous; later on the appellant informed him that he had paid the customs duty.

25 On the other hand, the appellant has denied that Zainah ever gave him any money to pay customs duty for the said goods and he alleged that such duty was paid by him out of his own money.

In records kept by the appellant there was discovered a docu- 30 ment showing that on July 23, 1973, the appellant paid C£176.280 mils as customs duty for plastic materials which were imported.

The trial Court did not believe the version of the appellant and accepted the evidence of Zainah and, consequently, convicted the appellant on count 12 of obtaining the amount of 35 C£1,500 by false pretences from Zainah.

Vera Charalambous was a prosecution witness and a summary of her statement to the police was made available to the appellant at the time when he was committed for trial. Her name

also appeared on the information as a prosecution witness who was going to be called at the trial, but she was not called because, before the trial, she left Cyprus for abroad.

During the hearing of this appeal counsel for the appellant applied that she should be called to give evidence as a witness before us, in view of the fact that she was not available at the trial and her evidence might prove to be helpful to his client. 5

We acceded, at the time, to his application and the reasons for doing so are as follows:

This Court has power, under section 146 (b) of Cap. 155, to hear further evidence when dealing with an appeal; and this power has been considerably enlarged by the provisions of section 25(3) of the Courts of Justice Law, 1960 (Law 14/60). 10

The principles governing the exercise of such power were expounded by this Court on many occasions in a number of cases, one of the earliest being that of *Simadhiakos* v. *The Police*, 1961 C.L.R. 64, and a more recent one that of *Arestidou* v. *The Police*, (1973) 2 C.L.R. 244. 15

The corresponding legislative provisions in England, to which we might usefully refer, are section 9 of the Criminal Appeal Act 1907,which was replaced later by section 23 of the Criminal Appeal Act 1968. 20

Such provisions are similar to, but not identical with, our own relevant provisions; as the object of our own provisions and the said provisions in England is definitely the same, English case-law (see, *inter alia*, Archbold, *supra*, pp. 608-609, paras. 889-890a) offers considerably helpful guidance: 25

A paramount consideration which should always be borne in mind is the need for finality in litigation and, in this respect, it is useful to quote the following passage from the judgment of Lord Wilberforce in the case of "*Declaration of Legitimacy of* 1926 *dispute*" (see the Solicitors Journal, 1977, vol. 121, pp. 233-234):- 30

> " 'Any determination of disputable fact might, the law recognised, be imperfect: the law aimed at providing the best and safest solution compatible with human fallibility and having reached that solution it closed the book. Some- 35

times fresh material might be found, which perhaps might lead to a different result, but, in the interest of peace, certainty and security it prevented further inquiry. It was said that, in doing that, the law was preferring justice to 5 truth. That might be so: those values could not always coincide. The law did its best to reduce the gap. But there were cases where the certainty of justice prevailed over the possibility of truth, and those were cases where the law insisted on finality. For a policy of closure to be 10 compatible with justice, it had to be attended with safeguards; so the law allowed appeals, appeals out of time; more exceptionally allowed judgments to be attacked on the ground of fraud; so limitation periods might exceptionally be extended. But those were exceptions to a 15 general rule of high public importance, and they were reserved for rare and limited cases, where the facts justifying them could be strictly proved.' "

So, the reception of further evidence on appeal amounts to an exception to the rule of finality in litigation and the reasons 20 justifying such an exception were expounded in *R.* v. *Parks*, [1961] 3 All E.R. 633, 634, and were adopted by this Court in the *Arestidou* case, *supra*, (at p. 246).

The *Parks* case, *supra*, was referred to by the House of Lords in *Stafford and Another* v. *Director of Public Prosecutions*, 25 [1973] 3 W.L.R. 719, where Viscount Dilhorne stated (at pp. 723-725):-

" The Court has to decide whether the verdict was unsafe or unsatisfactory and no different question has to be decided when the Court allows fresh evidence to be called.

30 Where such evidence is called, the task of the Court of Appeal may be extremely difficult. They have not heard the evidence the jury have heard. They can only Judge of that from the shorthand note. They know, however, that the jury by their verdict have accepted some 35 part, it may not be all, of the evidence for the prosecution and at least sufficient of it to satisfy them of the accused's guilt. They know too that the jury must have rejected the defence put forward.

Mr. Hawser argued that all the Court of Appeal was

entitled to do was to consider whether the fresh evidence was relevant and capable of belief. He based this argument primarily on some observations of Lord Parker C.J. in *Reg.* v. *Parks* [1961] 1 W.L.R. 1484, where Lord Parker said that it was not for the Court of Criminal Appeal to decide whether the fresh evidence was to be believed or not. Lord Parker was then stating the principles which the Court would apply in relation to the exercise of its discretion to admit fresh evidence under section 9 of the Criminal Appeal Act 1907 (now replaced by section 23 of the Criminal Appeal Act 1968). He said the evidence must be relevant and credible. Then he said that it was not for the Court to decide whether it was to be believed. I agree that in deciding whether to admit fresh evidence, the Court, which at that stage has not heard the evidence, has not to decide whether it is to be believed but I do not agree that, when the Court has heard the evidence, it has not to consider what weight, if any, should be given to it. Lord Parker's fourth principle, as he called it, was that the Court, after considering the evidence, would go on to consider whether there might have been a reasonable doubt in the minds of the jury as to the guilt of the appellant if that evidence had been given together with the other evidence at the trial. I cannot see how the Court can consider this question without considering what weight should be given to the fresh evidence they have heard; and I do not see that this principle is applicable to the question whether the evidence is to be admitted. It is only after it has been admitted and, it may be, subjected to cross-examination, that its weight can be assessed and the Court decide whether it might have affected the jury's verdict.

I do not suggest that in determining whether a verdict is unsafe or unsatisfactory, it is a wrong approach for the Court to pose the question—'Might this new evidence have led to the jury returning a verdict of not guilty?' If the Court thinks that it would or might, the Court will no doubt conclude that the verdict was unsafe or unsatisfactory. Mr. Hawser in the course of his argument drew attention to the many cases in which, since 1908, and since the amendment made in 1966, the Court has quashed

a conviction saying that in the light of the fresh evidence the jury might have come to a different conclusion, but I do not think that it is established as a rule of law that, in every fresh evidence case, the Court must decide what they think the jury might or would have done if they had heard that evidence. That it is a convenient approach and a reasonable one to make, I do not deny. When a Court has said that, it means and can only mean that they think that the fiesh evidence might have led to a different result to the case, and that in consequence the verdict was unsafe or unsatisfactory.

Mr. Hawser strongly urged that the Court should recognise that reasonable men can come to different conclusions on the contested issues of fact and that, although the Court came to the conclusion that the fresh evidence raised no reasonable doubt as to the guilt of the accused, they should nonetheless quash the conviction if they thought that a jury might reasonably take a different view.

I do not agree. It would, in my opinion, be wrong for the Court to say: 'In our view this evidence does not give rise to any reasonable doubt about the guilt of the accused. We do not ourselves consider that an unsafe or unsatisfactory verdict was returned but as the jury who heard the case might conceivably have taken a different view from ours, we quash the conviction' for Parliament has, in terms, said that the Court should only quash a conviction if, there being no error of law or material irregularity at the trial, 'they think' the verdict was unsafe or unsatisfactory. They have to decide and Parliament has not required them or given them power to quash a verdict if they think that a jury might conceivably reach a different conclusion from that to which they have come. If the Court has no reasonable doubt about the verdict, it follows that the Court does not think that the jury could have one; and, conversely, if the Court says that a jury might in the light of the new evidence have a reasonable doubt, that means that the Court has a reasonable doubt.

It is well settled that the Court of Appeal should only apply the proviso to section 2(1) if it is of the opinion that, if the jury had been properly directed, it would inevitably

have come to the same conclusion. While, of course, the proviso cannot be applied where the Court thinks the verdict unsafe or unsatisfactory, Mr. Hawser argued that in a 'fresh evidence' case the Court should follow the same principle as that applicable to the proviso and only hold that a conviction was safe and satisfactory if they thought that a jury which heard the fresh evidence would inevitably have come to the conclusion that the accused was guilty. I cannot accept this argument. When the application of the proviso is under consideration, something has gone wrong in the conduct of the trial. In a 'fresh evidence' case nothing has gone wrong in the conduct of the trial and I see no warrant for importing the principles applicable to the proviso into the determination of whether a verdict is or is not safe and satisfactory."

In *R.* v. *Lattimore and others*, 62 Cr. App. R. 53, Scarman L.J., after having explained that subsection (1) of section 23 of the Criminal Appeal Act 1968 empowers the Court of Appeal to receive fresh evidence on appeal, whilst subsection (2) of the same section imposes a duty upon the Court of Appeal to receive further evidence if certain conditions are met, without, however, such conditions restricting in any way the exercise of the discretion under subsection (1), proceeded to state (at p. 56):-

"The obligation to receive further evidence imposed by subsection (2) is new law: the obligation did not exist prior to the enactment of section 5 of the Criminal Appeal Act 1966, which it reproduces. The discretionary power is very much older: it was originally conferred by section 9(1) of the Criminal Appeal Act 1907, of which Walton J. said in *PERRY AND HARVEY* [1909] 2 Cr. App. R. 89, 92: 'In my opinion this Court ought not to consider itself bound by any hard and fast rule never to allow further evidence to be called when the fact that it was not called was due to the mistaken conduct of the case .... If it was plainly made out that justice required it, I think this Court would interfere'."

In *R.* v. *Melville*, [1976] 1 W.L.R. 181, Lord Widgery C.J. stressed (at p. 186) "that the discretionary power in the Court

to allow fresh evidence under section 23(1) should be available in all cases to avoid any kind of injustice which might occur."

In the light of the foregoing principles we reached the conclusion that, due to the circumstances which resulted in Vera Charalambous not being available to give evidence at the trial as a witness for the prosecution, or to be, at least, tendered then for cross-examination by counsel for the appellant, we should receive her evidence during the hearing of this appeal in order to exclude any possibility of injustice occurring.

Having heard her evidence and having watched carefully her demeanour while testifying, and after evaluating her evidence in relation to other proved facts, we had to decide ourselves whether or not to uphold the conviction on the count concerned. Regarding our task, in this respect, it is useful to refer again to the *Stafford* case, *supra*, and to quote, in addition to the passages already reproduced in this judgment from the report of that case, the following passage from the judgment of Lord Cross of Chelsea (at pp. 737-738):-

> " In a fresh evidence case it is natural for the Court to put itself in the position of the jury which convicted on the original evidence and to ask itself whether the addition of the fresh evidence might have induced a reasonable doubt in its mind. But that is only another way of asking whether it might have induced a reasonable doubt in the minds of the members of the Court if they had constituted the jury. It is, of course, true that two equally reasonable men may differ as to whether there is a reasonable doubt as to the guilt of the accused. But if I feel sure that he is guilty and you feel a doubt on the point I must regard your doubt on that point as unreasonable however reasonable a person I consider you in general to be. Conversely, if I regard your doubt as reasonable I cannot feel sure that the accused is guilty. I do not think that the Court of Appeal when, in the cases to which we were referred, it asked itself whether the jury might have felt a reasonable doubt in the light of the fresh evidence, was intending the formula to cover a doubt which the Court would think unreasonable though the jury might wrongly think it reasonable. It is to be remembered that in many fresh evidence cases the Court does not commit itself to any

view of its own as to the effect of the fresh evidence. At one end of the scale there are cases where the Court will say:

> 'This fresh evidence puts such an entirely new complexion on the case that we are sure that a verdict of guilty would not be safe. So we will quash the conviction and not order a new trial.' 5

At the other end of the scale there will be cases where the Court will say, as it said in effect in this case:

> 'The fresh evidence though relevant and credible adds so little to the weight of the defence case as compared with the weight of the prosecution's case that a doubt induced by the fresh evidence would not be a reasonable doubt. So, we will leave the conviction standing.' 10

But in many cases the attitude of the Court will be: 15

> 'We do not feel at this stage sure one way or the other. If this fresh evidence was given together with the original evidence and any further evidence which the Crown might adduce then it may be that the jury — or we, if we constituted the jury — would return a verdict of guilty but on the other hand it might properly acquit. So we will order a retrial.' 20

It was argued that this approach to 'fresh evidence' cases would be inconsistent with the approach of the Court to 'proviso' cases. It may be, as my noble and learned friend suggests, that different considerations apply to such cases; but though I would not wish to express a concluded opinion on the point I am not — as at present advised — satisfied that it would be wrong for the Court to say when there was, for example, a wrong direction in the summing up. 25 30

> 'If the substitution of the right for the wrong direction led the jury to entertain a doubt as to the guilt of the accused which they would not otherwise have felt we are satisfied that such a doubt would not be a reasonable one — and so we shall apply the proviso.' " 35

We have reached the conclusion that Vera Charalambous,

who frankly admitted that she is a close personal friend of the appellant, is not a credible witness at all, and that she gave evidence with the sole purpose of trying to be of assistance to the appellant; therefore, we find no reason, on the basis of her evidence, to interfere with the findings of the trial Court which led to the conviction of the appellant on count 12, and we do uphold such conviction.

We shall deal next with the conviction of the appellant on counts 3 to 11, which, as we have already explained earlier on in this judgment, relate, in groups of three, respectively, to the forging and uttering of three different cheques signed in blank by the complainant Zainah; the third count in the first two groups is a count charging the appellant with having actually obtained money by false pretences, whereas the third count in the third group charges him only with having attempted to obtain money by false pretences, because, as already mentioned, the forged cheque concerned was not cashed due to lack of funds in the bank account of Zainah.

These nine counts, 3 to 11, together with count 12, with which we have already dealt, are the counts charging the appellant with having committed substantive offences in furtherance of the conspiracy with which he was charged by means of count 2.

In relation to counts 3 to 11 the main evidence for the prosecution, in addition to that of the complainant, Zainah, was that of his son, Marouan.

According to the evidence of Marouan, cheque No. 137909 was given by him to the appellant, as a blank cheque signed by his father, in order to be filled in as payable to Gul, for the purpose of being used in order to pay the amount of C£300 customs duty in respect of goods which were expected from Egypt.

As a matter of fact, however, this cheque was, later on, found to have been filled in for the amount of C£3,300, instead of for the amount of C£300 only.

It was, indeed, filled in as payable to Gul, who cashed it at the Barclays Bank Nicosia.

Marouan has testified further that he gave to the appellant

two blank cheques, signed by his father, Nos. 137916 and 137917, in order to be used for the purpose of buying furniture for a shop which was needed for the common enterprises of the appellant with his father.

Marouan told the trial Court that until he left Cyprus the appellant had said nothing to him as to what had happened with cheque No. 137916. Eventually, it was found out that this cheque was filled in as payable to Badawi, for the amount of C£8,000, and that it was cashed at the Barclays Bank. 5

Regarding cheque No. 137917, Marouan testified that the appellant told him that it was used in order to pay C£225 for empty barrels, but it appears from the evidence of another prosecution witness, Antonakis Christodoulou (P.W.9), that this cheque was, eventually, filled in by this witness, in the name of Badawi, for the amount of C£50,000, and that this was done when Badawi and the appellant visited him at his place of work, that is at the "Astra Cinema" at Berengaria village in the District of Limassol. This witness went on to testify further that the appellant had told him that he could not fill in this cheque himself because he had injured his hand. 10 15 20

The said cheque was presented for payment at Barclays Bank Nicosia, but it was not cashed due to lack of funds in the current account of the complainant, Zainah.

A police handwriting expert, Christoforos Georghiou (P.W. 1), has given evidence connecting the handwriting on cheque No. 137916 with that of the daughter of the appellant, Elli Constantinidou, and the handwriting on cheque No. 137917 with that of Christodoulou (P.W.9); the expert could not connect the handwriting on cheque No. 137909 with the handwriting of either of the above two persons or of the appellant himself. 25 30

The count in the information, which refers to cheque No. 137917, is count 9, and the related counts of uttering such cheque as a forged document and of attempting to obtain money by false pretences, through trying to cash it, are counts 10 and 11, respectively. 35

It is appropriate, at this stage of our judgment, to deal specifically with the conviction of the appellant in relation to the said three counts:

The date on the cheque concerned, that is cheque No. 137917, is September 5, 1973, and witness Christodoulou (P.W.9) has testified that when he filled in the cheque, he wrote on it the date on which the appellant and Badawi visited him and asked
5 him to fill it in for the sum of C£50,000.

The trial Court accepted the evidence of Christodoulou as reliable.

During the hearing, however, of this appeal counsel for the appellant applied that we should receive in evidence the appel-
10 lant's passport, which had remained in police custody till after his conviction, having been seized by the police when the appellant was arrested.

Counsel for the respondent did not object, in the circumstances, to the passport of the appellant being produced as
15 evidence before us, for the purposes of this appeal. It appears, clearly, from the contents of this passport that the appellant was absent from Cyprus from September 3 to September 7, 1973, and that, therefore, he could not have been at "Astra Cinema" at Berengaria village, on September 5, 1973, when,
20 according to the evidence of Christodoulou, he and Badawi asked him to fill in cheque No. 137917 for the amount of C£50,000.

It is, of course, possible that Christodoulou may have made a mistake about the exact date on which the appellant and
25 Badawi visited him as aforesaid, or that he put on the cheque in question, for some reason, about which it would not be proper for us to speculate, a date other than the one on which the appellant and Badawi visited him and asked him to fill in that cheque.

30 As this is, however, a criminal case in which we should feel certain beyond reasonable doubt about the establishment of the guilt of the appellant, we have decided that the safest course would be to give to the appellant the benefit of the doubt arising from the correlation between the date on the
35 cheque concerned and the aforementioned period during which, according to his passport, he was absent from Cyprus, and to allow his appeal on count 9, as well as on the related counts 10 and 11, with the result that he is discharged on such counts

and the sentences passed upon him in connection with them are set aside.

In view of our above conclusion we need not deal with any ground of appeal which relates, in particular, to counts 9, 10 and 11 only. 5

We shall deal, next, with the appeal of the appellant against his conviction on counts 3 to 8, that is the counts relating to cheques Nos. 137909 and 137916:

It has been submitted by counsel for the appellant that his client ought not to have been convicted of the forgery of the 10 two cheques in question, because, in any event, it has not been established that specific instructions as to their use had been given by the complainant, Zainah, when such cheques were signed by him in blank.

It was found, however, as a fact, by the trial Court—and we 15 do think that such finding was amply warranted by the evidence adduced at the trial—that the said cheques were entrusted by Zainah to his son Marouan with authority to use them only for the expenses of the envisaged common enterprises with the appellant, as well as for the personal expenses of Marouan, 20 and, furthermore, that Marouan was not to use them except with the approval of the appellant.

In *The Queen* v. *Bateman*, 1 Cox C.C. 186, Erle J. said (at p. 187):

> " If a cheque is given to a person with a certain authority, 25 the agent is confined strictly within the limits of that authority, and if he choose to alter it, the crime of forgery is committed. If the blank cheque was delivered to him with a limited authority to complete it, and he filled it up with an amount different from the one he was directed to insert; 30 and if, after the authority was at end, he filled it up with any amount whatever, that too would be clearly forgery."

Also, in the same case, Patterson J. stated (at p. 187):-

> " I quite agree with my learned brother, that if the prisoner filled up the cheque with a different amount, and for diffe- 35 rent purposes than those which his authority warranted, the crime of forgery would be undoubtedly made out."

In *R.* v. *Butler*, 38 Cr. App. R. 57, to which we have been referred by counsel for the appellant, Lord Goddard C.J. said (at pp. 61–62):-

" In those cases the appellant sent in coupons which were undoubtedly signed by genuine persons, he having persuaded those persons to lend their names and having filled the coupons in himself. There was no direction given to the jury to consider whether or not those persons had authorised the appellant to fill in the coupons in the way in which he did, but from the evidence there was no suggestion that the persons who had signed their names had expressly limited his authority. They left it to him to fill in the coupons as he liked. He had indeed filled in an amount for a widow who could not possibly have paid if she had been required to do so. If one person gives another a blank cheque, so to speak, he may and very often does find that he is let in for a considerable liability. For instance, if a bill of exchange is accepted in blank and is handed to another person, it is with authority to fill in any sum. If these people were stupid enough to get coupons and hand them to the appellant to fill in without saying that the limit was to be, for example 1d. or 6d., that does not amount in law to forgery."

In our view the facts in the *Butler* case, *supra*, are clearly distinguishable from those of the present case, because in the present case, as already stated, the authority to use the blank cheques signed by Zainah was strictly limited, and there can by no doubt, on the material before us, that such authority has been exceeded by far.

We, therefore, hold that it was correctly found, on the basis of sections 331 and 333 (c) of Cap. 154,that the aforesaid two cheques had been forged.

Section 331 reads as follows:-

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

Section 333 (c) reads as follows:-

" 333. Any person makes a false document who –

....

(c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorised would have altered the effect of the document;"

As has been mentioned earlier in this judgment, it has not become possible to connect the handwriting of the appellant with the handwriting of the person who forged cheque No. 137909; and cheque No. 137916 was filled in in the handwriting of the daughter of the appellant. The former cheque was made payable to Gul who cashed it, and the latter to Badawi who, also, cashed it.

The trial Court found, however, that the forging and the uttering of the said two cheques, as well as the obtaining, by means of them, of money by false pretences, were offences which were committed by a group of persons, including the appellant, Badawi and Gul, in furtherance of the common purpose of defrauding the complainant, and, in view of this, the trial Court found guilty the appellant on counts 3 to 8.

Counsel for the appellant, on the other hand, has submitted that the appellant could not have been convicted on such a basis because from the counts concerned there was omitted any reference to sections 20 and 21 of Cap. 154.

As was correctly pointed out by the trial Court in its judgment, section 20 of Cap. 154 does not create by itself any offence, but it merely lays down in what way a person can become a particeps criminis. On the other hand, section 21 deals with the responsibility for offences committed jointly in furtherance of a common purpose and provides that each participant is considered to have committed the offence which is the outcome of such furtherance.

In our opinion, therefore, the omission to refer expressly in the counts concerned to sections 20 and 21 of Cap. 154 is not, at all, a material irregularity, nor has it prejudiced, in any way, the defence of the appellant; and it should be recalled, in this respect, that the proviso to section 39 of Cap. 155 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."

Another complaint of counsel for the appellant concerning the validity of his conviction on the counts charging him with forgery was that there is no direct evidence that the actus reus of the offence of forgery occurred in Nicosia, or even within the territory of the Republic of Cyprus.

In our view, this was a matter not having, necessarily, to be proved by means of direct evidence. It can be inferred, as it was inferred by the trial Court, beyond reasonable doubt, from all the surrounding circumstances, that the two cheques concerned, which were in the possession of Maroùan, the son of the complainant, who was residing at the time in Nicosia, and which were cashed at the Barclays Bank Nicosia, in a town where the appellant and Badawi and Gul were, at the time, also, residing, were forged in Nicosia, and, therefore, within the Republic.

It is not the duty of the courts to speculate about fanciful possibilities; as has been stated in *Mancini* v. *Director of Public Prosecutions* 28 Cr. App. R. 65, by Viscount Simon L.C. (at p. 77):-

> "Taking, for example, a case in which no evidence has been given which would raise the issue of provocation, it is not the duty of the Judge to invite the jury to speculate as to provocative incidents, of which there is no evidence and which cannot be reasonably inferred from the evidence. The duty of the jury to give the accused the benefit of the doubt is a duty which they should discharge having regard to the material before them, for it is on the evidence, and the evidence alone, that the prisoner is being tried, and it would only lead to confusion and possible injustice if either Judge or jury went outside it."

The conviction of the appellant on counts 3 to 8 was based mainly on the view which the trial Court took of the credibility of the main prosecution witnesses in this respect, namely Zainah and Marouan, on the one hand, and of the appellant, as the accused, on the other hand.

It is well settled that this Court does not interfere with verdicts of trial Courts in criminal cases which depend on findings concerning the credibility of witnesses unless this Court is persuaded that there do exist good grounds entitling it to do so (see, *inter alia*, in this respect, *Orphanou* v. *The Police*, (1973) 2 C.L.R. 260, 261, *Soulis* v. *The Police*, (1973) 2 C.L.R. 68, 70 and *Charalambides* v. *HadjiSoteriou and Others*, (1975) 1 C.L.R. 269, 277).

Counsel for the appellant has tried to persuade first the trial Court, and then us, that Zainah and, especially, Marouan, were persons whose word was not worth believing in view of what he described as various serious contradictions and improbabilities in their evidence, and, because of the evidence of other witnesses who were called by the defence for the purpose of discrediting the evidence given by Marouan regarding certain matters.

We have carefully considered the evidence of Zainah and Marouan as a whole and notwithstanding the fact that there are, indeed, certain weaknesses as regards a number of points in their evidence, we do not consider these points to be of such a really material nature as to lead us to the conclusion that the trial Court was wrong in accepting them as credible witnesses.

Counsel for the appellant has complained, in particular that the trial Court made no specific finding as to whether or not it believed the evidence of the witnesses who were called to destroy the credibility of Marouan; we do not think that this is a fatal flaw in the judgment of the trial Court, because it is obvious from such judgment, if read as a whole, that the trial Court considered the credibility of Marouan in the light of all the evidence that had been adduced, even if it did not specifically deal with the evidence of the aforementioned witnesses, which it obviously did not find sufficient to discredit Marouan.

Another argument that has been advanced by counsel for the appellant is that the trial Court was influenced, in preferring the evidence of Zainah and Marouan and in rejecting that of the appellant, by the fact that it was erroneously led to treat the appellant as an untruthful witness because it believed the evidence of Antonakis Christodoulou (P.W.9) concerning the

filling in, on September 5, 1973, at the "Astra Cinema" at Berengaria village, of cheque No. 137917 for the sum of C£50,000. Counsel for the appellant has urged us to treat as unsafe the finding of the trial Court regarding the credibility of Zainah and Marouan, because, according to him, it was linked to the issue of the credibility of the aforesaid prosecution witness Christodoulou and of the appellant regarding the cheque in question; but, as, after the production during the hearing of the appeal of the passport of the appellant, it transpired that the appellant was not in Cyprus on September 5, 1973, as Christodoulou had alleged, it was clear, according to counsel for the appellant, that the trial Court had erred in preferring the evidence of Christodoulou to that of the appellant; and counsel for the appellant contended that once the appellant was treated as an untruthful witness because the trial Court accepted erroneously as credible the evidence of Christodoulou, it is highly probable that this influenced the trial Court in treating, also erroneously, the appellant as an untruthful witness in relation to matters about which Zainah and Marouan gave evidence and whose evidence the trial Court accepted in preference to that of the appellant.

In the first place, the matters about which Zainah and Marouan testified, and in connection with which their evidence was believed by the trial Court, relate to entirely different circumstances than the incident concerning the filling in of cheque No. 137917 on September 5, 1973; and we cannot agree, when reading the judgment of the trial Court as a whole, that it can be said that Zainah and Marouan were believed instead of the appellant because of the fact that the appellant was not believed regarding the incident involving the aforesaid cheque in that in this respect there was preferred,instead of his evidence, that of prosecution witness Christodoulou.

Secondly, we have set aside the conviction of the appellant on the counts relating to the aforementioned cheque (counts 9, 10 and 11) not because we have been persuaded that in relation to what has happened concerning the cheque No. 137917 the appellant has told the truth, and prosecution witness Christodoulou has lied, but simply because we decided to give to the appellant the benefit of a doubt created due to the entries in his passport showing, *prima facie*, that he was absent from Cyprus on September 5, 1973, and because we did not want to

proceed to speculate to his prejudice about the possibility that the cheque might have been signed just as witness Christodoulou has testified, but on a date other than the one which such cheque appears to bear, and, therefore, at a time when the appellant was not absent from Cyprus.

For all the foregoing reasons we have reached the conclusion that we have not been satisfied by counsel for the appellant that the guilt of his client has not been established in relation to counts 3 to 8 with the certainty required for the purposes of a conviction in criminal proceedings and so the appeal against his conviction in respect of these counts has to be dismissed.

The appellant has, also, appealed against the sentences imposed on him by the trial Court. We have considered all that his counsel has submitted in support of his appeal in this respect, but we would not have been prepared to interfere with the said sentences, because, in view of the gravity of the offences concerned and the circumstances in which they were committed, we do not regard them as either manifestly excessive or wrong in principle, even if we were to take fully in favour of the appellant any mitigating circumstances personal to him. What has, however, led us eventually to the decision to reduce the sentences passed upon the appellant in respect of counts 3, 4, 6 and 7, namely the concurrent sentences of seven years' imprisonment, is the fact that sentences of imprisonment of the same duration were imposed, also concurrently, in respect of counts 9 and 10, in relation to which we have set aside the conviction of the appellant, and it is probable that the trial Court, in assessing the proper punishment for the conduct of the appellant in relation to the forging and uttering of the three cheques to which counts 3, 4, 6, 7, 9 and 10 relate, was influenced by the fact that one of such cheques, No. 137917, was forged so as to be made to appear to be good for the payment of the considerable amount of C£50,000.

In view of the fact that, as already stated,in relation to counts 9 and 10, regarding the said cheque No. 137917, the appellant's conviction has been set aside and it is not really certain that the trial Court would have imposed sentences of seven years' imprisonment on counts 3, 4, 6 and 7 had it not decided to convict the appellant and punish him with sentences of the same duration in respect of counts 9 and 10, we have decided that the

better course for us, in the peculiar situation with which we are faced in this case, is to lean towards leniency and reduce to terms of five years imprisonment, running concurrently, the sentences which were passed upon the appellant in respect of
5 counts 3, 4, 6 and 7, in relation to which we upheld his conviction.

In the result this appeal against conviction and sentence is allowed in part and is dismissed as regards the rest, as stated hereinabove.

10 *Appeal partly allowed.*