GEORGHIOS PETRIDES AND OTHERS,

Appellants,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal Nos.* 2717, 2719-21)

(*Consolidated*)

Criminal Law—Conspiracy to forge Cyprus currency notes—The Criminal Code Law, Cap. 154, *section* 371 *and the Currency Law, Cap.* 197, *section* 16—*Conspiracy in Cyprus to forge Cyprus currency notes abroad—Necessary ingredients of the offence—Correct application of section* 371 *of Cap.* 154 (supra) *and its new section* 5 *as introduced by section* 4 *of the Criminal Code (Amendment) Law,* 1962 (*Law No.* 3 *of* 1962)—*A substantive ingredient of that offence* (i.e. *conspiracy in Cyprus to forge Cyprus currency notes abroad*) *is that the forging of Cyprus currency notes should also be an offence* (*not necessarily a felony*) *under the Law of the country where it was proposed to be done—Therefore, on a charge of conspiracy as aforesaid it is necessary to prove that the action intended to be done, in the instant case: forging Cyprus currency notes in Athens, is an offence under Greek Law—Position in this respect not affected or altered by the new section* 5 *of Cap.* 154 *as introduced by section* 4 *of the aforesaid Law No.* 3 *of* 1962 (supra)—*Which section cannot be construed as amending or partly repealing section* 371 *of Cap.* 154 (supra) *with regard to its application to offences committed within the territory of Cyprus, as in the case with the conspiracy charged in the instant case.*

Statutes—Construction—Implied repeal—In construing a statute the Court must look, inter alia, *at the mischief aimed at—But it cannot add words to a statute or read words into it which are not there—And if the statute has created an offence, it is not for the Court to find other offences not appearing in the statute—Repeal by implication—It is only effected when the provisions of a later enactment are so repugnant to, or so inconsistent with, the provisions of an earlier one, that the two cannot stand together—The maxim* "leges posteriores contrarias abrogant"—*Its meaning, scope*

and effect—And special Acts are not repealed by implication by general Acts unless there is a necessary inconsistency in the two Acts standing together and unless it could be seen quite clearly that by the later statute it was intended that the former Act be repealed—Such interpretation is not to be adopted unless it be inevitable—Or unless the later Act (or section thereof) can only be given a sensible meaning if it is treated as impliedly repealing the earlier Act (or section thereof).

Criminal Procedure—Appeal—New trial—When ordered under the Criminal Procedure Law, Cap. 155, *section* 145 (1) (*d*)—*In the instant case the Supreme Court held that, in view of the nature of the defect of the conviction on count* 1 *and all other circumstances, "this is one of those exceptional cases in which the interests of justice demand that there should be a new trial". And that this is not a proper case in which to simply allow the appeal and quash the conviction under section* 145 (1) (*b*) *of Cap.* 155 (supra)—*And that in a case like the present one it would not be desirable to allow the calling of evidence before it under section* 25 *of the Courts of Justice Law,* 1960 (*Law of the Republic No.* 14/60) *to supplement on appeal a defect of the case for the prosecution.*

Criminal Procedure—Appeal—New trial ordered—Bail—Pending the new trial the appellants were ordered to remain in custody in view of the gravity of the offence and other circumstances.

Criminal Law—Possessing forged Cyprus currency notes—The Currency Law, Cap. 197, *section* 18.

All the appellants in the present appeals appeal against their convictions on the 18th June, 1964, by the Assize Court of Nicosia, on charges of conspiracy to forge Cyprus currency notes of £5 denomination, contrary to section 371 of the Criminal Code Law, Cap. 154, and section 16 of the Currency Law, Cap. 197, and of possessing forged Cyprus currency notes of £5 denomination, contrary to section 18 of the Criminal Code Law. The forging of the Cyprus currency notes was proposed to be done in Athens.

These four appeals were consolidated and the appellants have continued to be referred to by the numbers which they had been given as accused persons at their trial. There were six accused at the trial before the Assize Court, of whom accused 5 was acquitted and accused 1, having appealed later, withdrew his appeal.

All appellants were found guilty on the conspiracy count but only appellants 3 and 4 were found guilty on the possession count, the other two appellants 2 and 6, having been acquitted thereon

During the hearing of the case before the Assize Court, the issue, arose under section 371 of Cap 154, whether it was necessary to adduce evidence proving that the forging of Cyprus currency notes, which was proposed to be done in Athens, was an offence under the laws in force in Greece The Assize Court, relying on the new section 5 of the Criminal Code as it will be explained later on, held that it was not

Section 371 of the Criminal Code, Cap. 154, reads as follows

"371 Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in the Colony would be a felony, *and which is an offence under the laws in force in the place where it is proposed to be done*, is guilty, of a felony, and is liable . . . "

For "Colony" read "Republic" after the 16th August 1960

Section 5 of the Criminal Code, Cap 154, before its repeal in 1962 (*infra*) provided

"5 The jurisdiction of the Courts of the Colony for the purposes of this Law extends to every place within the Colony or within three miles of the coast thereof measured from low water mark"

The relevant part of the new section 5 of the Criminal Code, Cap 154, as same was introduced by section 4 of the Criminal Code (Amendment) Law, 1962 (Law No 3 of 1962) reads as follows :

"5 (1) The Criminal Code and any other Law creating an offence are applicable to all offences committed—

(*a*)

(*b*)

(*c*)

(*d*)

(*e*) in any foreign country by any person if the offence is—

(i)

(ii)

(iii) connected with the coin or currency notes of the Republic ;

(iv)

(v) ."

The Assize Court, agreeing with the submission of the Counsel for the Republic, held that under the provisions of section 5 of the Criminal Code as introduced by section 4 of Law 3/62 (*supra*), the Criminal Code applies, *inter alia*, to offences committed abroad if the offence is connected with the coins or currency notes of the Republic, and, therefore, a conspiracy to forge currency notes of the Republic abroad is an offence triable by the Courts of the Republic without any further proof as to whether the actual forgery in another country amounts to an offence under the law of that country. On appeal the Supreme Court :

Held, (1) as regards the effect of the provisions of section 4 of Law 3/62 (*supra*), on the provisions of section 371 of Cap. 154 (*supra*) :

(*a*) The enactment of section 4 of Law 3/62 (*supra*) has not affected at all the provisions of section 371 of Cap. 154 (*supra*).

(*b*) The new section 5 of Cap. 154, introduced by section 4 of Law 3/62, rendered the Criminal Code and also, *inter alia*, the Currency Law, Cap. 197 (*supra*) applicable to certain offences committed in any foreign country. Its provisions for extra-territorial application are not limited to felonies only, as in the case of section 371.

(*c*) If it were to be accepted that by the enactment of the new section 5 of Cap. 154 the provisions of section 371 ought to be deemed as amended or repealed accordingly, then this would result in creating under section 371, by implication, in addition to the two offences of conspiracy already expressly provided for (*supra*) yet a third offence of conspiracy *viz.* a conspiracy in Cyprus to commit abroad an offence, out of those specified in sub-section 1 (*e*) of section 5, provided that such offence is a felony. This could not have been the intention of section 4 of Law 3/62 which introduced the said section 5.

(*d*) Bearing in mind the mischief aimed at in substituting a new section 5 of Cap. 154, it is not for the court to consequently add words to or read words into section 371, so as to find provided for therein an offence which does not appear in it, once such a thing has not been expressly legislated for in Law 3/62 or otherwise.

(*e*) Section 371 of Cap. 154 is an earlier special provision, dealing with specific offences of conspiracy, whereas the section 5 of Cap. 154 is a subsequent general provision dealing with the question of territorial and extra-territorial application of, *inter alia*, Cap. 154. Moreover, the two said provisions could not even be said to be inconsistent with each other, as their objects are different. It is thus not possible to accept that section 5 has repealed by implication the requirement under section 371 to the effect that the act, the subject of conspiracy, should be also an offence by the laws in force in the place abroad where it is to be done.

(f) It is possible to give a "sensible meaning" to the new section 5 of Cap. 154, without, in any way, necessarily, repealing or amending any of the provisions of section 371. The objects of section 371 and section 5 are different and the language of each should be restricted to its own object and subject-matter. In effect, they are parallel provisions which do not conflict with one another.

Furthermore, it may be pointed out that section 5 of Cap. 154 is an affirmative provision not entailing any negative, expressed or implied. It cannot, therefore, be held to repeal an earlier law, such as section 371.

(*g*) The legislature did not intend to approach afresh the subject of the offence of conspiracy under section 371, in enacting the new section 5 of Cap. 154, but only enacted it to make an amendment of and an addition to existing law on the subject of extra-territorial application. The relevant provisions of section 5, sub-section (1), may render section 371 of the Criminal Code applicable to offences which are committed outside Cyprus, but they cannot and should not be construed as amending or partially repealing section 371 with regard to its application to offences committed within the territory of Cyprus, as is the case with the conspiracy under count 1 of the information.

Held, (2) it follows, therefore that it ought to have been established before the trial Court, as an essential ingredient

of the offence of conspiracy charged under section 371, that the act which was the subject of the conspiracy charged in count 1 *viz.* the forging of Cyprus currency notes in Athens, was an offence under the laws in force in Greece, where it was proposed to be done. As this was not established the conviction of all four appellants is defective in law and must be quashed.

(3) This is indeed a proper case in which to exercise our powers under sub-section 1 (*d*) of section 145 of the Criminal Procedure Law, Cap. 155 and to order a new trial. We are of the opinion that this is one of those exceptional cases in which the interests of justice demand that there should be a new trial.

(4) (*a*) There shall, therefore, be an order for a new trial by the next Nicosia Assizes, or by a special Assize for the purpose, should the Supreme Court so direct, of all appellants (2, 3, 4 and 6) on count 1, and of appellants 3 and 4 on count 3. The new trial Court should have a different coram—so as to ensure the appellants a totally fresh hearing of their case and to spare the judges concerned the labour of sitting once again through the lengthy proceedings that may be involved ; in the case of *Ioannis Nestoros* v. *Republic* (1961 C.L.R. p. 217) the same course was adopted on this point.

Ioannis Nestoros v. *Republic* (1961) C.L.R. 217 as regards the order for retrial *followed.*

(*b*) All appellants to remain in custody pending their new trial ; the charge of conspiracy which they face is, in our opinion, of the gravest nature and persons facing such a charge, after a preliminary enquiry which has found a *prima facie* case against them as well as after a trial which led to a conviction, are indeed entitled, on the basis of an order for a new trial, to a fair hearing *de novo* without any weight at all being attributed to the fact that they have already been found guilty as charged, but are definitely not to be let out until justice has pronounced finally on their case.

Appeal allowed. New trial ordered as aforesaid.

Observation :

It goes without saying that should they, or any of them, be found guilty again, any time spent in prison between their first

and second convictions may properly be taken into account as regards assessing sentence; otherwise, the new trial Court should be free to assess sentence in a manner compatible with the gravity of the crime without being hindered in any way by the sentence imposed at the first trial.

Cases referred to :

R. v. *Wimbledon Justices*, ex parte *Derwent* (1953) 1 Q.B. 361, at p. 384, per Lord Goddard C.J., *applied :*

Kutner v. *Philips*, (1891) 2 Q.B. 267, at pp. 271–272 per Smith J., *applied :*

Thorpe v. *Adams*, *Law Rep.* 6 *C.P.* 125 ;

Middleton v. *Crofts* 2 Atk. 675 ;

Felton and Another v. *Bower and Co.* (1900) 1 Q.B., 598, at pp. 602–604, *applied ;*

Ex parte *Attwater*, *in* re *Turner* (1877) 5 Ch. 27, at p. 32 per Bramwell J., *applied ;*

The Electricity Authority of Cyprus and Costas Partassides and others 20 (II) C.L.R. 34, *followed ;*

In re *Chance* (1936) Ch. 266, at p. 270 per Farwell J., *applied ;*

In re *Berrey*, *Lewis* v. *Berry* (1936) Ch. 274 at p. 279, per Farwell J., *applied ;*

Ioannis Nestoros v. *Republic* (1961) C.L.R. 217 ;

R. v. *Stoddart* 2 Cr. App. R., 217 ;

R. v. *Dyson* (1908) 2 K.B., 454 ;

R. v. *Joyce* 1 Cr. App. R., 142 ;

Bryan v. *United States* (338 US 552) decided in 1950 ;

Louisiana ex rel. *Francis* v. *Resweber* (329 US 459).

Appeal.

All the appellants were convicted on the 18th June, 1964, at the Assize Court of Nicosia (Cr. Case No. 17592/63) on one count of the offence of conspiring to commit a felony *i.e.* forgery of Cyprus currency notes of £5 denomination contrary to section 371 of the Criminal Code, Cap. 154 and 16 of the Currency Law, Cap. 197 and (2) appellants Nos. 3 and 4 were convicted on another count of the offence of possession of forged or counterfeited Cyprus currency notes of £5 denomination contrary to section 18 of the Currency

Law, Cap. 197 and sections 20 and 21 of the Criminal Code, Cap. 154, and were sentenced by Evangelides, Ioannides and Demetriades, D.JJ. as follows :—

appellant No. 2 : 18 months imprisonment on count 1.

appellants Nos. 3 and 4 and 6 : 2 1/2 years imprisonment on count 1.

appellants Nos. 3 and 4 : nine months imprisonment on count 2, the sentences to run concurrently.

L. N. Clerides with *G. Tornaritis*, for appellant No. 2.

A. Hji Constantinou with *E. C. Efstathiou* for appellants Nos. 3 and 4.

A. Georghiades, for Appellant No. 6.

S. A. Georghiades, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the court

VASSILIADES, J.: The judgment of the court will be read by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: The four appellants in these cases appeal against their convictions on the 18th June, 1964, by the Assize Court of Nicosia, on charges of conspiracy to forge Cyprus currency notes of £5 denomination, contrary to section 371 of the Criminal Code Law, Cap. 154, and section 16 of the Currency Law, Cap. 197, and of possessing forged Cyprus currency notes of £5 denomination, contrary to section 18 of the Currency Law and sections 20 and 21 of the Criminal Code Law.

These four appeals were consolidated and, for convenience, appellants have continued to be referred to by the numbers which they had been given as accused persons at their trial. There were six accused at the trial before the Assize Court, of whom accused 5 was acquitted and accused 1, having appealed, later withdrew his appeal.

All appellants were found guilty on the conspiracy count but only appellants 3 and 4 were found guilty on the possession count, the other two appellants 2 and 6, having been acquitted thereof.

In view of the conclusions reached by the court in these appeals it would not be proper to embark at length upon the

salient facts. It suffices to say that Cyprus £5 notes were in the process of being forged in Athens, with a view to their eventual introduction into Cyprus ; the amount involved would have been about half a million pounds. It was, no doubt, a criminal enterprise of unparalleled kind. The matter came to the notice of both the Cyprus and the Greek police authorities and eventually through timely and praiseworthy action of such police authorities the scheme was foiled ; some specimen forged £5 notes which were sent to Cyprus were seized by the police on the 3rd October, 1963.

There is a legal issue which is fundamental for the purpose of deciding on the validity of the conviction on the conspiracy count. Such issue is the one concerning the correct application of section 371 of Cap. 154, which reads as follows :—

> " 371. Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in the Colony would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment."

For " Colony " read " Republic " after the 16th August, 1960.

In the particulars of the conspiracy count in the information it is stated that "The accused at diverse days to the prosecution unknown between the 1st day of January and the 3rd day of October, 1963, at Nicosia, in the district of Nicosia, did conspire with one another, with Pericles Kritharides now of Athens and Georghios Siaflas of Athens and other persons to the prosecution unknown, to forge or counterfeit, Cyprus currency notes of £5 denomination ".

The issue, therefore, arose, under section 371 of Cap. 154, whether it was necessary to adduce evidence proving that the forging of Cyprus currency notes, which was proposed to be done in Athens, was an offence under the laws in force in Greece.

The matter was disposed of as follows by the trial Court in its judgment, (at p. 60 of the record) ;

> " We propose to deal, first of all, with the legal point raised by the defence regarding count 1. It has been

submitted by counsel for the defence that count 1 should be dismissed because the prosecution failed to prove that the forging in Greece of Cyprus currency notes was an offence under Greek law. Their submission was based on the wording of section 371 of the Cyprus Criminal Code. We have, therefore, agreed with the submission of the counsel for the Republic that under the provisions of section 5 of the Criminal Code as amended by section 4 of Law 3/62, the Criminal Code applies, *inter alia*, to offences committed abroad if the offence is connected with the coins or currency notes of the Republic, and, therefore, a conspiracy to forge currency notes of the Republic abroad is an offence triable by the Courts of the Republic without any further proof as to whether the actual forgery in another country amounts to an offence under the law of that country."

The relevant part of section 4 of Law 3/62, which has introduced a new section 5 of Cap. 154, reads as follows :—

" 5.—(1) The Criminal Code and any other Law creating an offence are applicable to all offences committed—

(*a*)
(*b*) ..
(*c*)
(*d*)
(*e*) in any foreign country by any person if the offence is—

(i)
(ii)
(iii) connected with the coin or currency notes of the Republic ;
(iv)
(v) . ."

It has been submitted by counsel for respondent that section 4 of Law 3/62, in introducing a new section 5 in Cap. 154, has, by implication, done away with the requirement under section 371 of Cap. 154, of proving that the act in question is an offence under the laws in force in the place of the world where it is proposed to be done. In effect, that section 371 has been accordingly amended or repealed, in part, to that extent.

We do agree with the learned trial Court Judges that because of section 4 of Law 3/62 offences committed abroad in connection with the currency of the Republic are now triable by the courts of the Republic ; but there remains yet to be determined whether this is sufficient to do away with the specific requirements of section 371 of Cap. 154.

The position as formulated by the trial Court, and expounded upon by counsel for the respondent, appears at first sight to be convincing but, after going into the matter further, we have been unable to agree to it and we have reached the conclusion that the enactment of section 4 of Law 3/62 has not affected at all the provisions of section 371 of Cap. 154, for the following reasons :—

Section 371 of Cap. 154 provides, in effect, for two offences of conspiracy committed in Cyprus ; the first one is a conspiracy in Cyprus to commit a felony in Cyprus and the second is a conspiracy in Cyprus " to do any act in any part of the world which if done, in the Colony (now Republic) would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done ". " Felony " is defined in section 4 of Cap. 154. It must be borne in mind, in interpreting section 371, that under section 5 of Cap. 154, as it stood before the enactment of Law 3/62, the jurisdiction of Cyprus Courts for the purposes of Cap. 154 was limited to the territory of Cyprus and its territorial waters.

The new section 5 of Cap. 154, introduced by section 4 of Law 3/62, rendered the Criminal Code and also, *inter alia*, the Currency Law applicable to offences committed in any foreign country. Its provisions for extraterritorial application are not limited to felonies only, as in the case of section 371.

Section 5 does not create any new offences or make other substantive provision in respect to offences. It is not intended at all to have such an effect. Its object is abundantly clear also from its heading " Territorial and extraterritorial application ". Moreover it does not legislate that the offences, in relation to which it has provided for extraterritorial application, shall be automatically deemed to be offences in the country in which they were committed. On the contrary, with the exception of offences dealt with under sub-section 1 (*e*) of this section—in which offences against the coin or currency notes of the Republic are included—sub-section 1 (*d*) of the same section makes it an essential

condition of extra-territoriality that the offence in question should also be punishable by the law of the country where it was committed.

It should not be lost sight of that the offences specified under section 5 (1) (*e*) are all offences *committed abroad* whereas the relevant offence of conspiracy under section 371 is an offence committed *in Cyprus* and it is a substantive ingredient of such latter offence that the act to which the conspiracy relates should be both a felony by Cyprus law an offence by the laws of the country where it is to be done.

If it were to be accepted that by the enactment of the new section 5 of Cap. 154 the provision of section 371 ought to be deemed as amended or repealed accordingly, then this would result in creating under section 371, by implication, in addition to the two offences of conspiracy already expressly provided for, yet a third offence of conspiracy *viz.* a conspiracy in Cyprus to commit abroad an offence, out of those specified in sub-section 1 (*e*) of section 5, provided that such offence is a felony. This could not have been the intention of section 4 of Law 3/62 which introduced the said section 5.

In the case of *R.* v. *Wimbledon Justices*, ex parte *Derwent* (1953 1 Q.B., p. 380) the court had to decide whether an offence created under a statute was to be construed to be a continuing offence and Goddard C.J. had this to say (at p. 384) :—

> " . . . although in construing an Act of Parliament the court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at, it cannot add words to a statute or read words into it which are not there, and, if the statute has created a specific offence, it is not for this court to find other offences which do not appear in the statute."

Likewise, we are of the opinion that bearing in mind the mischief aimed at in substituting a new section 5 of Cap. 154, it is not for the courts to consequently add words to or read words into section 371, so as to find provided for therein an offence which does not appear in it, once such a thing has not been expressly legislated for in Law 3/62 or otherwise.

It is a canon of construction, intended to avoid collision between statutory provisions, that the revocation or alteration of an existing statutory provision is not allowed through the construction of a later statutory provision when the provi-

sions concerned are capable of proper operation without it. In the case of *Kutner* v. *Phillips*, (1891, 2 Q.B., p. 267) Smith J. had this to say (at pp. 271–272) :—

> " Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim, " *Leges posteriores contrarias abrogant* ' applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together : *Thorpe* v. *Adams*, (Law Rep. 6 C.P. 125). Lord Coke, in Gregory's Case (6 Rep. 19*b*) lays it down, ' that a later statute in the affirmative shall not take away a former Act, and *eo potior* if the former be particular and the latter be general '; and Lord Hardwicke, in the case of *Middleton* v. *Crofts* (2 Atk. 675) is to the same effect."

In the later case of *Felton and Another* v. *Bower and Co.* (1900, 1 Q.B., p. 598 at pp. 602–604), the decision in *Kutner* v. *Phillips*, though distinguished, was affirmed as correct and the court went a step further in holding that, though the provisions of a later statute were clearly inconsistent with those of an earlier statute, nevertheless, as the earlier statute was a special one and the later statute was a general one, the earlier was not to be deemed as repealed by implication by the latter, as it could not be seen quite clearly that it was intended so to do.

In our opinion, section 371 of Cap. 154 is an earlier special provision, dealing with specific offences of conspiracy, whereas the new section 5 of Cap. 154 is a subsequent general provision dealing with the question of territorial and extra-territorial application of, *inter alia*, Cap. 154. Moreover, the two said provisions could not even be said to be inconsistent with each other, as their objects are different. It is thus not possible to accept that section 5 has repealed by implication the requirement under section 371 to the effect that the act, the subject of the conspiracy, should be also an offence by the laws in force in the place abroad where it is to be done.

Another relevant decision is ex parte *Attwater*. *In* re *Turner* (1877, 5 Ch., p. 27) which concerned the apparent conflict between the provisions of the Bills of Sale Act, 1854, and of

section 95 of the Bankruptcy Act, 1869. Under the former it had been provided that one of the consequences of non-registering a bill of sale was that such bill was void as against the assignees in bankruptcy of the grantor, unless possession was actually taken before the bankruptcy ; the time of bankruptcy had been interpreted as meaning the time of the commission of an act of bankruptcy which was followed by an adjudication. Section 95 of the later statute protected the validity of certain transactions by and in relation to the property of a bankrupt, made in good faith and for valuable consideration, before the date of the order of adjudication. Bramwell J. A. said (at p. 32) :—

> " The only remaining question is, whether the Bills of Sale Act has been repealed or modified by the 94th section, or more especially by the 95th section, of the present Bankruptcy Act. I am of opinion that it has not. Not that but there are words in section 95 which are apparently inconsistent with the Bills of Sale Act. But there is a well-known rule which says that, though a subsequent law abrogates a prior inconsistent law, that is not so where the prior law is not one of general application. Now, the object of this first law, the Bills of Sale Act, was to insure the registration of bills of sale, and the object of the 95th section of the Bankruptcy Act was not to make it less expedient or desirable that the grantee of a bill of sale should register it, or in any way to diminish the stringency of the provisions of the Bills of Sale Act as to the registration of Bills of sale. The object of the 95th section is entirely different. Therefore, it is not one of those cases in which a subsequent law abrogates a prior inconsistent law."

It may be also useful to mention at this stage a Cyprus precedent, the case of *The Electricity Authority of Cyprus and Costas Partassides and others* (20 (II) C.L.R. p. 34) where it was held that the provisions of the Electricity Law and the Electricity Development Law did not by implication repeal or prevent the application of provisions of The Streets and Buildings Regulation Law.

On the subject of repeal by implication we find the following stated in Maxwell on Interpretation of Statutes, 11th edition, p. 162 :—

> " But repeal by implication is not favoured. A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is a reasonable presum-

ption that the legislature did not intend to keep really contradictory enactments on the Statute Book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation, therefore, is not to be adopted unless it be inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention."

A case on the point is *In* re *Chance* (1936, Ch. p. 266) in which Farwell J. said (at p. 270) :—

" As I have already said, I think that if it is possible it is my duty so to read the section ; that is to say, so to read it as not to effect an implied repeal of the earlier Act. Reading the section in this way makes the form of it somewhat inconvenient, but I do not think that is sufficient to justify me in saying that the effect of the second proviso is a partial repeal of the earlier Act. As I think that it is possible to read this section in such a way as to make it consistent with the law as it was before this Act came into operation, that is the way I ought to read it, . . . "

The same Judge in the case of *In* re *Berrey*, *Lewis* v. *Berry* (1936 Ch. p. 274) said (at p. 279) :—

" It is well settled that the Court does not construe a later Act as repealing an earlier Act unless it is impossible to make the two Acts or the two sections of the Act stand together, *i.e.* if the section of the later Act can only be given a sensible meaning if it is treated as impliedly repealing the section of the earlier Act."

In our opinion it is possible to give a " sensible meaning " to the new section 5 of Cap. 154, without, in any way, necessarily, repealing or amending any of the provisions of section 371. The objects of section 371 and section 5 are different and the language of each should be restricted to its own object and subject-matter. In effect, they are parallel provisions which do not conflict with one another.

Furthermore, it may be pointed out that section 5 of Cap. 154 is an affirmative provision not entailing any negative, expressed or implied. It cannot, therefore, be held to repeal an earlier law, such as section 371 ; see, in this respect, Maxwell on " Interpretation of Statutes ", 11th edition, p. 166, and the case-law mentioned thereto.

In the same textbook, at p. 177, the following is stated in relation to implied repeal in penal acts :—

" The problem often arises whether the manner in which the matter is dealt with in the later Act shows

that the legislature intended merely to make an amendment or addition to the existing law, or to treat the whole subject *de novo* and so to make a *tabula rasa* of the pre-existing law. Of course, when the objects of the two Acts are not identical, each of them being restricted to its own object, no conflict takes place."

In our opinion the legislature did not intend to approach afresh the subject of the offence of conspiracy under section 371, in enacting the new section 5 of Cap. 154, but only enacted it to make an amendment of and addition to existing law on the subject of extra-territorial application. The relevant provisions of section 5, sub-section (1), may render section 371 of the Criminal Code applicable to offences which are committed outside Cyprus, but they cannot and should not be construed as amending or partially repealing section 371 with regard to its application to offences committed within the territory of Cyprus, as is the case with the conspiracy under count 1 of the information.

For the above reasons, we have come to the conclusion that it ought to have been established before the trial Court, as an essential ingredient of the offence of conspiracy charged under section 371, that the act which was the subject of the conspiracy charged in count 1 was an offence under the laws in force in Greece, where it was proposed to be done. As this was not established the conviction of all four appellants is defective in law.

There remains now to examine what is the course to be adopted in the circumstances. On the one hand, we do not think that this is a proper case in which to simply allow the appeal and quash the conviction under sub-section 1 (*b*) of section 145 of the Criminal Procedure Law, Cap. 155. On the other hand, having considered whether to resort to the powers granted to this court under section 25 of the Courts of Justice Law, 1960 (14/60) we have come to the conclusion that, in a case of this nature, it would not be desirable to allow the calling of evidence before us in order to supplement on appeal a defect of the case for the prosecution, especially in view of some " inconveniences ", to say the least, already caused to the defence due to the mode of adducing evidence by the prosecution at the trial.

Bearing in mind the nature of the defect of the conviction on count 1 and all other circumstances, including the aforesaid " inconveniences ", we consider that this is indeed a proper case in which to exercise our powers under sub-section 1 (*d*) of section 145, and to order a new trial. We

are of the opinion, indeed, that this is one of those exceptional cases in which the interests of justice demand that there should be a new trial.

A recent precedent of the exercise of the powers under section 145 (1) (*d*) for the purpose of ordering a retrial is *Ioannis Nestoros* v. *Republic* (1961 C.L.R. p. 217). This was also a case decided by Assizes and involving a conspiracy count ; the High Court of Justice having found that the trial was unsatisfactory ordered a retrial having regard to the submissions of the Republic's counsel as to the existence of a *prima facie* case on the counts on which the accused had been convicted. We do think that in the present instance a new trial should properly be ordered on the same ground, among others.

The need of ordering a retrial, instead of allowing simply an appeal, when the interests of justice so require, has been stressed in many decisions of English courts, in spite of the fact that the statutory provision in force there, unlike our section 145 of Cap. 155, did not allow such course to be adopted.

In *R.* v. *Stoddart* (2 Cr. App. R., p. 217), the Court of Criminal Appeal in England stated in its judgment (at p. 245) as follows :—

> " This appeal has brought out in strong relief the absolute necessity in the interests of justice of this court having the power in exceptional cases to order a new trial. Such a power would be rarely exercised ; but if there be in any case strong evidence upon which the jury, if properly directed, might have found a verdict of guilty, in the interests of justice the court should have the power to direct a new trial."

In *R.* v. *Dyson* (1908, 2 K.B., p. 454) it was stated by Lord Alverstone C. J. (at p. 457), after quashing the conviction on the ground of a misdirection on a point of law : " It is to be regretted that the legislature when passing the Criminal Appeal Act did not empower the court to order a new trial, for the present is a case in which it is eminently desirable that such a power should exist ". That was a case where there was evidence that the prisoner had inflicted injuries upon a child in November, 1906 and certain further injuries in December, 1907. In February, 1908, the child died. It was held by the Court of Criminal Appeal that although upon a proper direction the jury would probably have found that the later injuries accelerated the death, it was not

certain that they would have done so, and the fact that the judge had left it to the jury to find the prisoner guilty if they considered the death to have been caused by the injuries inflicted in 1906 amounted to a misdirection, because he ought to have directed them that no person can be convicted of manslaughter where the death does not occur within a year and a day after the injuries have been inflicted.

In *R.* v. *Joyce* (1 Cr. App. R., p. 142), the conviction again having been quashed it was stated in the judgment of the Court (at p. 143 as follows) :—

> " This case brings into relief how extremely valuable the power in this court to order a new trial would be. It would naturally be rarely exercised, but without it possibly crimes go unpunished when there has been a serious misdirection."

In the United States of America the right of an appellate court to order a new trial is well settled under appropriate statutory provision. In the case of *Bryan* v. *United States* (338 US 552), decided in 1950, the Supreme Court affirmed a decision of the Court of Appeals of the Fifth Circuit which reversed the conviction because the evidence was insufficient to sustain the verdict and at the same time remanded the case to the District Court directing a new trial. Mr. Justice Minto said in the judgment (at pp. 559–560) as follows :—

> " The Court of Appeals apparently believed that justice was served by the granting of a new trial in this case. On the motion to amend its order of remand the court stated : ' The majority thinking the defect in the evidence might be supplied on another trial directed that it be had'."

The American statute (28 USC para. 2106) on the basis of which the new trial had been directed, stated that court of appellate jurisdiction might, *inter alia*, " require such further proceedings to be had as may be just under the circumstances ". In our opinion this is more or less similar to the powers of this court under section 145 (1) (*d*) of our Cap. 155.

In the above case the Supreme Court of the U.S.A. dealt too with the issue of double jeopardy, which was raised as a contention for reversing the order for a new trial. It was held, affirming the earlier case of *Louisiana ex rel. Francis* v. *Resweber* (329 US 459) that " where the accused successfully seeks review of a conviction, there is no double jeopardy upon a new trial ".

In view of the decision to order a new trial, on count 1 of all the four appellants before us, it is not necessary to deal

with any other grounds of appeal which have been urged against their conviction on count 1.

Two of the appellants have been convicted also on count 3, for possession of forged currency notes of £5 denomination. They have appealed against their convictions. As such convictions, especially that of appellant 3, are closely connected with their being found guilty of conspiracy under count 1, we have decided to set aside such convictions, too, and order, likewise, a new trial of such appellants 3 and 4 on count 3.

As there are no appeals against the acquittal of appellants 2 and 6 on count 3 such acquittals are not disturbed and likewise the conviction of appellant 1 on count 1, who has withdrawn his appeal, remains unaffected.

There shall, therefore, be an order for a new trial by the next Nicosia Assizes, or by a special Assize for the purpose should the Supreme Court so direct, of all appellants 2, 3, 4 and 6 on count 1, and of appellants 3 and 4 on count 3. The new trial Court should have a different coram—so as to ensure to the appellants a totally fresh hearing of their case and to spare the judges concerned the labour of sitting once again through the lengthy proceedings that may be involved ; in the case of *Nestoros* v. *Republic* (above) the same course was adopted on this point.

All appellants to remain in custody pending their new trial ; the charge of conspiracy which they face is, in our opinion, of the gravest nature and persons facing such a charge, after a preliminary enquiry which has found a *prima facie* case against them as well as after a trial which led to a conviction, are indeed entitled, on the basis of an order for a new trial, to a fair hearing *de novo* without any weight at all being attributed to the fact that they have already been found guilty as charged, but are definitely not to be let out until justice has pronounced finally on their case.

It goes without saying that should they, or any of them, be found guilty again, any time spent in prison between their first and second convictions may properly be taken into account as regards assessing sentence ; otherwise, the new trial Court should be free to assess sentence in a manner compatible with the gravity of the crime without being hindered in any way by the sentences imposed at the first trial.

Appeal allowed. Order for a new trial as aforesaid.