[JACKSON, C.J., AND HALID, J.]

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LEON GROSSMAN, *Appellant*,

v.

THE POLICE, *Respondents*.

(*Criminal Appeal No.* 1788.)

LEON GROSSMAN v. THE POLICE.

Accomplices—Corroboration—Relevancy of Evidence—Right of Advocate to see document used by opposing witness to refresh his memory—Cyprus Courts of Justice Orders and Laws, 1927 *to* 1934, *clause* 205 (6).

The appellant was employed in the public service as Supervising Expert for the manufacture of woollen textiles in the office of the Controller of Supplies. He was convicted under section 97 (1) of the Cyprus Criminal Code of corruptly agreeing to receive from one Anastassis Demetriou the sum of 4½*p*. for every pic of local woollen textiles delivered to the Controller of Supplies by the said Demetriou under his contracts with the Controller on account of afterwards recommending to the Controller of Supplies the grant of contracts to the said Demetriou for the weaving of local woollen textiles for the Government and the making of facilities in connection with such contracts. He was also convicted under section 99 of the Cyprus Criminal Code of receiving for himself from the said Anastassis Demetriou the sum of £749. 14*s*. 8*p*. on the understanding that he would favour the said Demetriou in transactions likely to take place between the said Demetriou and the Controller of Supplies in connection with the granting of contracts by the Controller of Supplies to the said Demetriou for the weaving of local woollen textiles for the Government and with the making of facilities for the working of such contracts.

The two witnesses on whom the prosecution chiefly relied were the said Anastassis Demetriou and one Brandt, who, when the agreement with the appellant was made was partner with Demetriou, was present at the making of the agreement, and was himself to obtain benefit thereunder. He also shared in the payment to the appellant of the commission of 4½ piastres a pic on cloth delivered to the Controller of Supplies under his contract with Demetriou.

There were two main questions for the decision of the Supreme Court on this appeal: (*a*) it being impossible for Demetriou or Brandt to commit either of the offences charged against the appellant, as neither of them were employed in the public service, could they be accomplices with the appellant in the commission of the offences charged? (*b*) If they were held to be accomplices, could the evidence of the one be used to corroborate the evidence of the other?

Held: It is not necessary that offenders to be accomplices should commit the same offence. There is nothing in clause 205 (6) of the Cyprus Courts of Justice Orders and Laws, 1927 to 1934, that is inconsistent with the requirements of the English Law on the same subject. Accomplices cannot corroborate one another. Books kept by an accomplice are his own evidence and can corroborate nothing. Evidence of offences other than those with which the accused is charged is admissible only if relevant to some matter in issue at the trial. *Decisions of Courts* interpreting the Common Law purport only to apply the existing Common Law to the circumstances of the particular case before the Court. Such decisions do not deliberately change the existing law as from a certain date.

Appeal from a conviction by the District Court of Nicosia.

J. Clerides (with *A. Indianos*) for the appellant.

C. Glykys, Assistant Crown Counsel, for the respondents.

The facts of the case are fully set out in the judgment of the Court which was delivered by:

JACKSON, C.J.: The appellant was convicted by the District Court of Nicosia on two counts, the first framed under section 97 of the Criminal Code and the second under section 99. He was sentenced to 18 months imprisonment on each charge, to run concurrently, and to a fine of £100 on the second charge.

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At the time mentioned in the charges, namely, between August, 1943, and February, 1944, the appellant, a Rumanian refugee and a textile engineer by profession, was employed in the department of the Controller of Supplies as Supervising Expert in the manufacture of woollen textiles. His employment in that capacity began on the 1st April, 1943, and continued until 23rd March, 1944, when he was suspended, prior to the charges in this case.

Textiles were manufactured for the Department by contract and it was part of the appellant's duties to decide the quantity of yarn to be issued to contractors on payment by them and to examine the contractor's finished products in order to ensure that they complied with the Department's specifications. It was also part of his duty to advise the Controller on the grant of contracts. As the appellant was the Department's only expert on textiles, his advice had great weight. Among the contractors was one Anastassis Demetriou who was the complainant in the case before the District Court.

The first charge upon which the appellant was convicted was that between the 21st and 25th August, 1943, he agreed to receive from Demetriou a commission at the rate of 4½ piastres for every pic of woollen cloth delivered by Demetriou under his contract with the Controller. The alleged consideration for this payment by Demetriou was that the appellant should recommend the grant of further contracts to him by the Controller and should give him facilities in the performance of his contracts. Those facilities apparently included the issue of cotton yarn.

The second charge upon which the appellant was convicted was that between the 3rd September, 1943, and the 17th February, 1944, following on the agreement mentioned in the first charge, and for a similar consideration, he received £749. 14*s*. 8*p*. from Demetriou. Particulars of the sum of £749, given with the charge, indicate that it represents a payment at the rate of 4½ piastres per pic on a total of approximately 30,000 pics.

Although this appeal is based on points of law, it is necessary for us to deal at some length with the evidence, in order to make clear how those points arise and to illustrate the views that we shall presently express upon them.

The principal witnesses against the appellant (whom we will call by his name, Grossman,) were the complainant Demetriou and another contractor named Brandt. At first these two persons were partners in the supply of woollen cloth to the Controller of Supplies, but after some months they dissolved their partnership and worked under separate contracts. Demetriou's contracts were by far the largest among about sixteen contractors employed and amounted to about 40,000 pics of cloth. Brandt's contracts came next in size and amounted to over 20,000 pics. The business of the other contractors was comparatively small.

The story told by these witnesses may be summarised as follows. Demetriou said that about the 25th August, 1943, he made his first delivery of cloth under his first contract, in partnership with Brandt. After delivery Grossman suggested a private conversation between the two of them. At this conversation Grossman proposed that, as Demetriou was likely to make a good thing out of contracts

with the Controller, and as the grant of contracts depended on him, Grossman, Demetriou should pay him a commission of 4½ piastres per pic on all cloth manufactured. Demetriou said that as he had already spent about £3,000 on the purchase of wool and the installation of looms and other expenses, in anticipation of business with the Controller, he felt compelled to agree to Grossman's proposal and did so. His ledger containing his partnership account showed expenses amounting, at that time, to not more than £400. Brandt's contribution to the partnership capital was £250.

As Brandt, Demetriou's partner, had not been present at Demetriou's conversation with Grossman, a further meeting was held between the three of them on the same day and Brandt agreed to the payment of commission. Brandt's own account of this meeting, as it appears on the record, was, to say the least, extremely hazy. On the same day, 25th August, 1943, Demetriou and his partner got their second contract, this time for 2,000 pics.

Both Demetriou and Brandt say that thereafter commission was regularly paid to Grossman on cloth delivered by the partnership. According to Demetriou there were five such payments between the 3rd September and the 5th October and Brandt was present at each of them. Brandt's own account of these payments is considerably less precise. From October onwards, the partnership having come to an end, Demetriou and Brandt worked under separate contracts, each continuing to pay commission to Grossman, at the rate agreed, until about the middle of February, 1944, when, as a result of representations by Demetriou to the Deputy Controller, proceedings began which led to this case.

According to Demetriou a conversation took place between himself and Brandt and Grossman, some months after the arrangement for the payment of commission to Grossman, at which Demetriou and Brandt tried to get the commission reduced from 4½p. to 3p. per pic. Other evidence places this conversation about the middle of November, 1943. Brandt's account of it differs from Demetriou's. He says, for example, that it was conducted between Grossman and himself in Rumanian and that he explained to Demetriou part, but not all, of what was said. As the conversation was an important one and as Demetriou, clearly the leader of the two, seemed to converse with Grossman without difficulty on other occasions, this difference in the two stories is unexplained. But both witnesses agree that the conversation took place and was unsuccessful. They both say that Grossman got cross and left them without discussing the matter. Demetriou says that Grossman later complained to him about this demand for reduction of the commission and offered him yarn which would be more economical to use and would so increase his profit. Demetriou also says that Grossman emphasized his influence in the grant of contracts and referred to the case of a contractor named Malis who had stopped paying commission and whose contracts had later been reduced. Demetriou accordingly continued to pay. Both Demetriou and Brandt speak of difficulties put in their way by Grossman if his commission was in arrear. They say that excuses were made to delay the issue of yarn to them and that some of their deliveries of cloth were rejected.

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The whole of the story of Demetriou and Brandt, up to the point to which we have taken it so far, was of course flatly denied by Grossman. In explanation of delays in issuing yarn and of rejections of cloth delivered, he said that there were real shortages of yarn from time to time and that when cloth was rejected it was rejected because of inferior manufacture. He said also that because of difficulties of the kind described, he had repeatedly advised that the Department should itself undertake the manufacture of cloth and that the employment of contractors should cease. In these statements he was supported by independent evidence that could not have been disbelieved.

Independent evidence of the conversations related by Demetriou and Brandt,—the conversation at which they said that the payment of commission had been agreed and the conversation at which they said that they had attempted to reduce it,—was not, in the nature of things, to be expected. But evidence, other than their oral statements, was produced to substantiate the payment of commission.

On the 4th November, 1943, a cheque was drawn by Demetriou in favour of Grossman for £150 and was endorsed by Grossman. There can be no doubt that this money passed. Both Demetriou and Grossman agree that the money was paid by Demetriou as a loan to Grossman to enable the latter to buy a car which he had been required by his Department to possess for the purposes of his work. On the 4th December Demetriou gave Grossman a receipt for £150 in repayment of the loan. The important difference between the two stories is in the method of repayment. Demetriou says that it was repaid by crediting Grossman with the commission due to him on cloth which Demetriou delivered. Grossman says that it was repaid in cash. No evidence of a cash payment by Grossman could be produced and the prosecution suggested that Grossman could not have had the money to repay the loan on 4th December. He had then been in the employment of the Department for eight months at a salary of £50 per month and he had to support a wife and child as well as himself. On the other hand, Demetriou's own evidence showed that between the date of the loan, 4th November, 1943, and the date on which he gave Grossman a receipt for repayment, 4th December, 1943, substantially less than £150 had become due to Grossman by way of commission at the rate at which Demetriou says he paid. Further, the receipt purports to have been given at Kondea, a village in the Famagusta district, and not in Nicosia where transactions about commission were usually completed. Until faced with his dated receipt, Demetriou maintained that repayment had been completed on the 10th December. By that date according to accounts kept by Demetriou a sufficient credit had accumulated.

In further support of his statements as to the payment of commission to Grossman, Demetriou said that he had given Grossman a loan of £50 in cash at Polis tis Khrysokhou on 25th December, 1943. Demetriou and Grossman were at the place mentioned on that day and there is evidence that Demetriou then borrowed £50 in cash from one of the witnesses, but there is no evidence whatever that he handed the money to Grossman. On the contrary it was suggested by the defence that Demetriou needed the money himself

to arrange for the purchase of wool from a local source. No receipt was given by Grossman for the loan nor by Demetriou for its repayment, as in the case of the earlier loan for £150. Nor did Demetriou give any account of the setting off of commission against this loan as in the case of the other.

But the evidence which clearly influenced the District Court very strongly in concluding that commission had been paid by Demetriou to Grossman were two books of accounts, produced by Demetriou at the request of the defence. One of these books, called in evidence the journal, purported to contain his accounts of his transactions with the Department in the manufacture of cloth. The other, called in evidence a ledger, contained nothing relevant to this case except what purported to be an account of the loan of £150 to Grossman and its repayment by the set off of commission due to the latter.

Demetriou said that the journal was made up by him, when possible from day to day, from rough notes of his cash payments recorded as they were made. This journal was referred to by Demetriou to refresh his memory when giving evidence. When Mr. Clerides who was defending Grossman, asked to see it for the purpose of cross-examining Demetriou, the District Court refused to allow him to do so, apparently on the ground that it was not in evidence. We may say at once that Mr. Clerides should most certainly have been allowed to see any document which an opposing witness used to refresh his memory. An advocate's right to do so is very firmly established and authority for the practice in such matters will be found in Taylor on Evidence, 12th Edition, at p. 897. The President's refusal to allow Mr. Clerides to examine this journal had important consequences. In order to see it Mr. Clerides was compelled to ask for it to be produced and it thus became one of the most influential items of evidence leading to the conviction of his client.

Among various items of expense in connection with the manufacture of cloth the journal records a long series of payments of commission between the 31st September, 1943, and the 17th February, 1944. It is clear that from this journal the particulars were taken that accompanied the charge against Grossman, alleging the payment to him, between those dates of a total sum of £749 by Demetriou as commission on the delivery of approximately 30,000 pics of cloth.

The entries relating to commission generally record payments to "K. & F." of certain sums on certain quantities of cloth, the sum paid being calculated at the rate of $5\frac{1}{2}p.$ per pic. In only one entry is Grossman's name mentioned, a small payment on 10th December, 1943, but Demetriou said that the letter "K" stood for Grossman and the letter "F" stood for Finklestein who, for a time, was Grossman's assistant but left Cyprus before this case began. Demetriou said that, by an arrangement of which there was no evidence, Finklestein received commission at the rate of $1p.$ per pic of cloth delivered. Grossman's commission, according to the evidence already mentioned, was at $4\frac{1}{2}p.$ per pic. In giving evidence Demetriou accordingly calculated the commission that he said he had paid Grossman by deducting Finklestein's alleged commission from the payments recorded in this journal.

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At the hearing of this appeal we took occasion to check this calculation for a particular date by way of sample. We found that the figure so produced differred from that which Demetriou stated in evidence that he had paid Grossman on that day. Demetriou said that on the 17th November, 1943, he paid Grossman £29. 1*s.* as commission. On the figures given in his journal for the commission paid to "K. & F." on that day, Grossman's commission should have been approximately £4 more. On the figures for pics delivered on that day the figures given in the journal for commission were wrong and Demetriou's oral evidence supposedly based on the journal, was right. In view of the conclusions to which we have come on other points, we have not thought it necessary to carry the check further, but it must necessarily affect the reliance to be placed on this journal.

The genuineness of these two account books, the ledger and the journal, depended entirely on Demetriou's word and they would not have been admissible in evidence if the defence had not produced them. The contention of the defence in regard to them was that they were false documents, concocted by Demetriou for the purposes of this case, his motive being his annoyance at being unable to get preference over other contractors in the issue of yarn and in being prevented by Grossman from delivering inferior cloth.

The circumstances of the final breach between Demetriou and Grossman are not entirely clear from the record. It appears however that some time in February, 1944, a few days before the last and largest payment of commission recorded in Demetriou's journal, a payment of £57 on the 17th February, a considerable quantity of Demetriou's cloth was rejected by Grossman for inferior quality. At about this time Demetriou's looms were reduced, on Grossman's recommendation, by 10, a considerable proportion of their total number. He was notified of that reduction on the 19th February, after the large commission, according to him, had been paid.

At some time during these proceedings, the actual date is not clear, he complained to Mr. Petrides of the rejection of his cloth and the reduction of his looms. On 1st February, 1944, Mr. Petrides had replaced Mr. Tate as the departmental officer in charge of the manufacture of cloth. Before Demetriou's complaint Grossman had reported to Petrides that the quality of Demetriou's cloth had fallen off and that when he had rejected it Demetriou had threatened to get him sent out of the country. Grossman showed Petrides some of Demetriou's cloth and Petrides said in his evidence that he was satisfied that it was in fact of bad quality. Consequently when Demetriou complained to Petrides, the latter told him that his cloth was of inferior quality and that if it did not improve he would only have himself to blame if he lost his contract altogether. On that occasion Demetriou merely said that he would try to improve. Shortly afterwards and before the 28th February Demettiou made his first complaint to the Department about the payment of commission to Grossman. According to his own evidence, he had then paid Grossman £749 in less than six months and had not previously complained about it to Grossman's superiors. On or about the 28th February he was sent by the Police to offer Grossman a bribe for the issue of yarn and he was given marked money with which to pay it. Grossman refused the money.

There was also evidence, including Mr. Tate's, that during Tate's period of control a contractor had tried to bribe Finklestein with £3. Finklestein had reported it through Grossman and Tate had ordered that the money should be returned. It was returned through Demetriou and Tate told him that contractors were not to pay even one piastre in the expectation of preferential treatment.

The only remaining evidence for the prosecution to which we need refer consisted of the statements of two witnesses, Paktines and Malis, who also were contractors for the manufacture of woollen cloth during the period of Grossman's employment. Paktines said that Grossman had demanded commission from him at the rate of 4½*p.* per pic of cloth delivered and had refused to give him yarn until he paid it. He had accordingly paid on a number of occasions.

Malis was the contractor whose case Demetriou said Grossman had mentioned to him as an example of what happened to contractors who stopped paying commission. In fact Malis said that he had never paid commission and that his looms had been reduced in number because he had not done so. Mr. Tate, in whose time Malis's difficulties had arisen, said that Malis's cloth had deteriorated because he used excessively coarse wool yarn and that he, Tate, had explained this to Malis. Malis also said that Grossman had tried to borrow £100 from him to buy a car and that he had actually lent him £14 to buy a bicycle and had never claimed repayment. He gave no precise reason for that omission.

It will be observed that Demetriou's story of his conversation with Grossman at which the latter mentioned Malis's name suggests that Grossman, in dealing with one contractor, made no secret of the fact that he was taking, or had tried to extort, bribes from another. On the other hand, Demetriou says that when Grossman asked him for a loan of £150 to buy a car, Grossman remarked, "We must be clever and not give opportunity to the people to understand what is taking place". This story of Grossman's openness on the first occasion is to be contrasted with the story of his secrecy on the second, more especially because it was on the second occasion that he provided the only incontrovertible evidence that money passed from Demetriou to himself.

We may now turn from the evidence to the points of law that arise in this appeal. These are, first, that Demetriou and Brandt, according to their own evidence, were accomplices of Grossman and that their evidence consequently requires corroboration under clause 205 (6) of the Cyprus Courts of Justice Orders and Laws, 1927 and 1934. It was also argued that accomplices cannot corroborate one another and that there was in fact no corroboration of their evidence which justified the trial Court in acting on it.

The second point was that the evidence of Paktines and Malis was inadmissible as tending to show that the accused was guilty of criminal acts other than those with which he was charged and was not relevant to any matter in issue.

There was a further argument to the effect that because of the inclusion of thirty-one separate payments in one count charging the accused with corruptly receiving a sum of money, the count was bad for duplicity. On our indicating that we felt difficulty in accepting that view in this particular case, the point was not pressed.

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We accordingly turn to the contention that Demetriou and Brandt were, according to their own evidence, accomplices of Grossman. They were clearly chargeable under section 97 (2) of the Criminal Code for having promised an illicit commission to Grossman for favours to come.

Section 99, which prescribes the punishment of public officers who take bribes, prescribes no punishment for the giver. In this it resembles the provisions of the Indian Penal Code upon which the Cyprus Code is modelled. The elaborate provisions of the Indian Code regarding the bribery of public servants do not expressly provide for the punishment of the giver of the bribe but leave him to be dealt with under the general provisions of the Code relating to abettors when the evidence justifies that course. (*See* "The Indian Criminal Law" by Starling, 8th Edition, p. 212.) We feel no doubt that when the receipt of a bribe is an offence under section 99 of the Cyprus Code, the giver of the bribe may, if the evidence justifies that course, be punished as an abettor under section 21.

We think, therefore, that there can be no doubt that Demetriou and Brandt, by their own admissions, were guilty of punishable offences by reason of the part they took in the offences with which Grossman was charged. In the case of the first charge, under section 97, they were punishable under the express provisions of the second part of that section, and in the case of the second charge, under section 99, they were punishable as abettors.

But it was argued for the Crown that Demetriou and Brandt could not be regarded as accomplices of Grossman, since, to be the accomplice of another, a man must not only commit an offence, he must commit the same offence as his accomplice. In this case Demetriou and Brandt could not commit the same offence as Grossman for it was of the essence of the offence that Grossman was a public servant and they were not. Moreover they did not take bribes, they gave them.

The learned President held that these two witnesses were not accomplices of Grossman, apparently on the ground, if we understand his reasons correctly, that they did not share in the money that Grossman was said to have received and were "not going to benefit in any way" from it. The President did not expressly refer to the benefits of another kind that Demetriou and Brandt clearly expected to receive from these payments. In effect the argument of Mr. Glykys, for the Crown, and the reasons given by the President have the same ground, that if offenders are to be regarded as accomplices they must commit the same offence. We regard this reasoning as mistaken. If, for example, two women hold down a girl for a man to commit rape upon her, they are clearly his accomplices though, equally clearly, they cannot commit the same offence. In the case of *Reg.* v. *Ram*, XVII Cox, p. 609, a woman was indicted for rape as a principal in the second degree, jointly with a man who was the principal offender, in circumstances set out in the report.

Mr. Glykys quoted the English case of *Reg.* v. *Boyes*, IX Cox at p. 32, which related to bribery at a parliamentary election. In that case the accused was the person who had given the bribe and the main question decided whether, assuming that the receiver of a bribe was an accomplice, there had been a proper direction

to the jury as to the desirability of corroboration of his evidence. It was not decided, and it was not necessary to decide, whether he was an accomplice or not.

The case of *Rex* v. *King*, 10 Crim. App. Rep., p. 117, which was also quoted by Mr. Glykys, was very different from the case before us. In that case there was a question whether a woman upon whose immoral earnings the accused lived was or was not his accomplice. The Lord Chief Justice remarked that there was no evidence that she was an accomplice in the offence with which the man was charged and that she was not necessarily so. The mere fact that she must necessarily have committed some other offence, such as soliciting, would not make her an accomplice of the accused in the offence with which he was charged. It was not decided that the woman could not be an accomplice in that offence ; it was only decided that there was no evidence that she was.

The question whether a witness is or is not an accomplice of the person charged must clearly depend upon the evidence in the particular case. In the case before us there is, according to the witnesses Demetriou and Brandt, the clearest evidence of an agreement between them and Grossman that Grossman should receive bribes from them and that they should benefit thereby. That agreement was itself the first offence of which he was convicted and the receipt of bribes from Demetriou and Brandt in pursuance of that agreement was part of the second. Moreover by their participation in Grossman's offences, they themselves became liable to punishment.

We feel no doubt whatever that the participation of Demetriou and Brandt, according to their own evidence, in both the offences of which Grossman was convicted was such that they were both his accomplices in those offences. Their participation was precisely of the kind that has always cast so much distrust upon the evidence of accomplices, persons who are described in Taylor on Evidence (13th Edition p. 164) as " usually interested and always infamous witnesses whose testimony is admitted from necessity, it being often impossible, without having recourse to such evidence, to bring the principal offenders to justice ".

It does not matter, in our view, that Brandt, after some months, ceased to be Demetriou's partner and that thereafter the bribes that he said he paid to Grossman were paid on his own account and do not form the subject of any charge. Brandt was an accomplice in the making of the agreement which was the subject of the first charge, and he was an accomplice in making the first five of the payments that were included in the second charge. No part of his evidence against Grossman on those charges is free from the taint that his participation gave it.

The learned President's ruling that Demetriou and Brandt were not accomplices of Grossman was clearly a fundamental ruling in this case, for though the President said that he would be extremely careful in accepting the uncorroborated evidence of the complainant, he did not consider that he was bound by any statutory provision. In fact he was bound by a statutory provision and not only in regard to the evidence of the complainant, Demetriou, but also in regard to the evidence of Brandt. The statutory provision is clause 205 (6)

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of the Cyprus Courts of Justice Orders and Laws, 1927 and 1934, and as we shall be concerned with it we quote it in full:

"205.—(6) No person shall be convicted of an offence upon the evidence of an accomplice unless such evidence is corroborated by some other material evidence which, in the opinion of the Court, is sufficient to establish the accuracy of the evidence of such accomplice".

No matter how cautious a judge may be in accepting the uncorroborated evidence of an accomplice, he is positively forbidden by this statutory provision from convicting upon it. The accomplice's evidence may seem to the judge to bear the unmistakeable stamp of truth on every word of it, but it is not enough to support a conviction unless it is corroborated to the extent that the statutory provision requires.

There has evidently been considerable doubt, from time to time, in Cyprus as to the law relating to the corroboration of the evidence of accomplices. Similar doubts existed in England until they were removed in 1916 by the leading case of *Rex* v. *Baskerville* (XXV Cox p. 519). It seems that doubts have also been created in Cyprus by the enactment in 1934 of the present clause 205 of the Cyprus Courts of Justice Orders to which we have referred, and these doubts appear to persist in spite of the decision of this Court in 1938 in the case of the *Police* v. *Kyriacos Sofocli* (C.L.R. XV p. 122). In that case sub-clause (6) of clause 205 was applied to the facts before the Court in accordance with the decision in *Rex* v. *Baskerville*. It seems desirable that we should endeavour to remove those doubts as far as they affect the case before us.

Two arguments were addressed to us by Mr. Glykys. The first was that *Rex* v. *Baskerville* does not bind the Cyprus Courts since it was decided in 1916 and, by virtue of the Evidence Law, 1935, the English law of evidence applied to Cyprus is the law in force in England on the 5th November, 1914. This is a very strange argument and appears to involve a misconception of the English theory of the common law. It is perfectly true that in actual fact decisions of Courts interpreting the common law often add something new to it, but they never purport to do so. They purport only to apply the existing common law to the circumstances of the particular case before the court. If those circumstances happen to be new, then something new may be added, and it is, of course, in that way that the common law is kept alive and grows. But it would be a grave error to treat a decision of that kind as though it were a statute, deliberately changing the existing law as from a certain date. We shall come later to the application of Baskerville's case to the circumstances of the case before us.

The second argument of Mr. Glykys was that the rule prescribed by sub-clause (6) of clause 205 of the law quoted, though eighteen years later in date than Baskerville's case, is not, in terms, the same as the rule of the English common law as declared in that case. It must therefore be intended to mean something else. In support of this argument reference was made to sub-clause (5) in which words which express the requirements of the English common law relating to the corroboration of accomplices are used in relation to the unsworn evidence of children. If corroboration of the same kind was to be required for the evidence of accomplices, why use a different description of it in sub-clause (6)?

The same question was expressly raised in the case of the *Police* v. *Sofokli* to which we have already referred and was answered in the judgment of Mr. Justice Fuad. He concluded, if we read his judgment correctly, that sub-clause (6) was to be interpreted in the light of the rules of the English common law relating to the corroboration of accomplices. With that conclusion we agree: but since the learned judge's argument in support of it appears, for some reason not entirely clear to us, to have left the question open to doubt, we shall endeavour to answer it again in our own way.

It was pointed out in the judgment mentioned above that the six separate provisions of clause 205, as enacted in 1934, replaced a single provision dating from 1882 and re-enacted in the Cyprus Courts of Justice Orders, 1927, forbidding a decision on the contested evidence of a single witness in any case, civil or criminal, without corroboration. In 1934 the legislature abandoned that general rule and enacted five particular provisions relating to particular cases, two civil and three criminal. The criminal cases are treason, cases involving the unsworn evidence of children, and cases involving the evidence of accomplices. The provisions relating to the two civil cases and to the first two of the three criminal cases are taken directly from English law, either statutory or common law. In providing for the third class of criminal case, namely those involving the evidence of accomplices, the legislature used the wording of the original clause, a very common practice in the drafting of legislation where there is a familiar form of words which can be made to fit a new provision. Thus in four out of five of the special provisions that it enacted the legislature adopted the exact provisions of the English law and in the fifth a form of words already familiar. It is obvious that in the four sub-clauses in which the precise words of English law are used, it was the intention of the legislature to substitute the particular provisions of English law for the general provision that the clause had previously made. To justify a conclusion that the legislature had a different intention in the fifth, it would be necessary to conclude also that, while adopting the identical provisions of English law in regard to the proof to be required in cases of treason and cases involving the unsworn evidence of children, the legislature intended that the proof to be required in cases involving the evidence of accomplices should in Cyprus be something less (for no one has suggested that it should be something more,) than the law of England requires.

Only the most positive statutory direction could, in our opinion, justify such a conclusion and there is no such direction in the statute. It was natural that a familiar form of words should be used and there is nothing in those words that is in any way inconsistent with the requirements of the English law on the same subject.

Up to the point to which we have carried the case so far our decision is that Demetriou and Brandt were, according to their own evidence, accomplices of Grossman in the offences with which he was charged. It remains to consider whether, in accordance with the interpretation that we have placed on sub-clause (6) of clause 205 of the Cyprus Courts of Justice Orders and Laws, 1927 and 1934, there was sufficient corroboration of the evidence of those witnesses to justify the trial court in acting on it.

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In accordance with the decision in *Rex* v. *Noakes*, (5 C. & P., 326) affirmed in *R.* v. *Baskerville*, accomplices cannot corroborate one another. Mr. Glykys, very rightly in our opinion, did not contest that proposition. What corroboration, accordingly, is to be found in the evidence of other witnesses ?

The learned President, having decided at the close of the case for the prosecution that neither Demetriou nor Brandt were acomplices, dealt in his judgment with the question of evidence corroborating Demetriou on the assumption that he was an accomplice. The President made no reference to the corroboration of Brandt and we do not therefore know what evidence, if any, the President considered to be corroborative of Brandt.

With regard to Demetriou, the learned President stated that the evidence of Demetriou was " corroborated by independent witnesses who could in no sense of the word be called accomplices ". Unfortunately the President omitted to state who those witnesses were. He may possibly have referred to the witnesses Paktines and Malis and we shall deal with their evidence. The only corroboration of Demetriou to which the President expressly referred were his account books, that is to say, his journal and ledger, and the cheque for £150 which he gave to Grossman on the 4th November, 1943, as a loan to enable Grossman to buy a car.

The learned President was evidently very powerfully influenced by Demetriou's account books. He said that he considered them " more than ample to prove the truth of Demetriou's story " and he added that they were " not the evidence of an individual ". Of course they were the evidence of an individual : that individual was Demetriou himself, and there was nothing but Demetriou's word to prove that the books were genuine. Indeed these books would not have been admissible in evidence at all unless the defence had asked for their production.

In Baskerville's case it was stated more than once that evidence which can be taken to corroborate an accomplice must be independent evidence ; and in the case of *R.* v. *Evans* (18 Crim. App. Rep. 123) it was decided, following Baskerville's case, that a complaint by a girl, made shortly after a sexual offence upon her, though admissible in evidence, was not the kind of corroboration of her story that was required since, in the words of the Lord Chief Justice, " it entirely lacks the essential quality of coming from an independent source ". We have therefore no hesitation in holding that Demetriou's account books, prepared by himself, were no corroboration of his evidence.

The only other piece of evidence to which the learned President expressly referred was the cheque for £150 which Demetriou gave Grossman on the 4th November, 1943, by way of a loan to buy a car. The President said that " the story of this cheque goes far to prove the truth of Demetriou's ledger ". We cannot follow this reasoning. The story of the cheque shows that Demetriou's loan to Grossman was repaid on the 4th December, the date of the receipt which Demetriou gave Grossman for its repayment. The ledger, as well as the journal and Demetriou's oral evidence, show that on the 4th December there was not sufficient commission due to Grossman to offset the amount of the cheque. And until faced with this dated receipt, Demetriou, as we have already observed,

maintained that the loan had not been repaid until the 10th December, by which time, according to both the ledger and the journal, sufficient commission had accumulated in Grossman's favour to repay it. The story of the cheque does not, therefore, corroborate the accuracy of Demetriou's ledger. On the contrary, the date of Demetriou's receipt contradicts it. Indeed, if there were any relation of corroboration at all between these two pieces of evidence, the ledger and the story of the cheque, it would be the ledger, the later in date, that corroborates the story of the cheque and not the cheque the ledger. Moreover, there was nothing but Demetriou's word to prove that the ledger was not deliberately made up by him for that very purpose. But the ledger, being Demetriou's own evidence, can corroborate nothing.

Although, in our opinion, the learned President wrongly estimated the significance of the cheque when he held that it corroborated the accuracy of Demetriou's ledger, we have still to consider whether the cheque corroborated Demetriou's evidence in any other way. It undoubtedly established the fact that £150 passed from Demetriou to Grossman. But this sum was admittedly lent to Grossman to enable him to buy a car and there is no necessary implication in that transaction that commission was being paid. Indeed, according to the evidence of Malis, Grossman asked him for a loan of £100 for the same purpose (Grossman says that it was £50) although Malis was paying Grossman no commission and never did. The learned President believed that the loan had been repaid by credits of commission, but we have already dealt with his reasons for that belief and found them mistaken. Holding that belief, he naturally disbelieved Grossman's story that the loan was repaid in cash. We are thus left with a choice between two stories, the story of Demetriou, the accomplice, which is without any independent corroboration and is in conflict with the date of his own receipt, and Grossman's story, in which there is nothing clearly impossible and which is, to some extent at any rate, corroborated by the date of Demetriou's receipt. In these circumstances we are unable to find that the story of the loan provides any corroboration of Demetriou's evidence that Grossman received commission from him.

It remains to consider whether the learned President was right in admitting the evidence of Paktines and Malis whose statements have been briefly summarised earlier in this judgment.

The evidence of Paktines tended to show that he paid commission to Grossman and that he had been obliged to do so because Grossman refused to give him cotton yarn unless he paid. The case of *Makin* v. *Attorney-General of N.S.W.*, (1894) A. C., 57, is sufficient authority, if any were needed, for saying that evidence that Paktines paid commission to Grossman is inadmissible to prove that Demetriou did so. In the case of *R.* v. *Bond* (1906) 2 K.B., 389, Mr. Justice Bray said (at p. 417) " the greatest care ought to be taken to exclude such evidence unless it is plainly necessary to prove something which is really in issue ".

Mr. Glykys argued in this case that the evidence of Paktines, and also of Malis, was admissible to show that Grossman made difficulties for contractors who did not pay commission and that when he made difficulties for Demetriou, or removed them, he must

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be taken to have done so for the purpose of obtaining commission from him. If Grossman had been charged with extorting bribes from Demetriou by putting difficulties in his way, and if his defence had been that the acts of extortion with which he was charged were simply inevitable incidents in the course of his business and were consequently unintentional, it would have been arguable that evidence should be admitted to prove similar acts which were clearly for the purpose of extortion, for this would rebut the accused's defence. In such a case the reason for the admission of such evidence would be that it related directly to the acts with which the accused was charged and so was directly relevant to the matter in issue. The cases of *R.* v. *Lovegrove*, 1920, 3 K.B., 643, and *R.* v. *Chitson*, 1909 2 K.B., 945, upon which Mr. Glykys relied, have no application to the evidence of Paktines in this case, for his evidence was in no way relevant to any matter in issue.

The question of the admissibility of the evidence of Malis requires a separate answer, for his evidence is linked to that of Demetriou by the latter's story of a conversation with Grossman at which Grossman quoted Malis by name as an example of what happened to contractors who did not pay commission. Malis himself said that Grossman asked him for commission, but that he did not pay it and that thereafter Grossman put difficulties in his way and reduced the number of his looms. His evidence tended to show that Grossman was guilty of attempting to obtain a bribe from him, an offence under section 97 of the Criminal Code, but not the offence with which he was charged. To that extent Malis's evidence thus resembles that of Paktines with which we have already dealt. But the question is whether Malis's evidence received a different significance from Demetriou's story of his conversation with Grossman and so became admissible to corroborate that story.

It would be clearly impossible to hold that, at the trial of a criminal charge, evidence that the accused had committed some other offence would be made admissible merely by the statement of some witness for the Crown that the accused had referred to it in conversation with him. If evidence of other offences is to be admitted, it must be relevant to some matter in issue in the trial.

In the case of *R.* v. *Lovegrove* a woman was charged with causing the death of another by procuring abortion. The accused's defence was that she had never seen the woman, but she admitted a conversation with the woman's husband at her house about letting some rooms in it. The husband said that because of a statement made to him by a certain Mrs. Type, he had taken his wife to see the accused and had arranged with her for the performance of the illegal operation. Mrs. Type's evidence was admitted to prove that the accused had performed a similar operation upon her and that she had given the accused's name and address to the dead woman's husband. The judgment in appeal shows that the justification for the admission of the evidence of the earlier offence was that it tended to corroborate the husband's account of his conversation with the accused. The husband's account of that conversation went to the very root of the issue at the trial. In cases of abortion, not only is the fact of an operation in issue but also its nature. The evidence of the earlier offence and that the husband obtained the accused's name and address from the person on whom

the earlier offence had been committed, was the strongest corroboration of his story that he had arranged the illegal operation with the accused. It was, accordingly, the strongest corroboration of evidence tending directly to prove the commission of the offence with which the accused was charged. Charges of abortion give rise to special issues and in Lovegrove's case there were clearly reasons for the admission of evidence of another offence that do not exist in the case before us. In the case of *R.* v. *Chitson*, which was also cited by Mr. Glykys, a man was charged with a sexual offence with a young girl under fifteen years of age, a servant in his house. The girl said that shortly after the act which was the subject of the charge the accused told her that he had behaved in the same way with another girl. Evidence was admitted to support that statement, including letters written by the prisoner to the other girl, whose name was thus disclosed. On appeal it was held that this evidence had been rightly admitted because it tended to corroborate the girl's evidence as to the acts with which the accused was charged. It did not appear that the accused had named the other girl to the complainant or that the complainant knew the other girl or knew of her existence, and the judgment on appeal stated that the value of the complainant's evidence would be in proportion to the impossibility of her having been able to invent the statement attributed by her to the prisoner. We take that passage in the judgment to mean that if an immoral act with the other girl had in fact occurred, the complainant could not possibly have known about it unless the accused had told her. Consequently evidence of the occurrence of that act was impotant to establish the truth of the complainant's evidence about the accused.

In the case before us Malis and Demetriou were both contractors to the department for some six months before Demetriou complained of Grossman to anyone in authority, and the evidence suggests that they knew one another. The evidence also indicates that Demetriou first reported his conversation with Grossman not less than three months after it was supposed to have occurred. Thus there seems no reason to believe that, by that time, Demetriou could not have known about Malis's dealings with Grossman unless Grossman had told him. He might, by that time, have learned of them from Malis himself or in a number of ways. Thus the reasoning of the judgment in Chitson's case does not seem to us to apply to the case before us.

We may add that we have also carefully considered the case of *R.* v. *Kennaway*, 12 Crim. App. Rep., 147, but since it was not relied upon by either side, we do not feel called upon to give reasons for our view that it does not provide authority for the admission of the evidence of Malis in this case.

It will be clear from what we have already said about the evidence of Paktines that we consider that there is no ground whatever upon which its admission can be upheld.

The question of the admissibility of Malis's evidence is much more difficult. We have no doubt that it was not admissible on the ground argued in the District Court and accepted by the learned President, namely, to show that the accused put difficulties in the way of other contractors to obtain commission from them and that when he made difficulties for Demetriou he must be taken

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to have done so for the same purpose. The difficulty arises on the question whether Malis's evidence was admissible to corroborate the accuracy of Demetriou's account of his conversation with Grossman. We do not say that it is impossible to feel any doubt on this question, but it will be apparent from what we have already said that we do not consider that any of the cases that have been quoted to us, or that we have examined for ourselves, provide clear authority for the admission of this evidence on that ground. In these circumstances we feel bound to hold that it must be excluded.

We can now conclude. We have had three main questions to consider. The first was whether Demetriou and Brandt were accomplices of Grossman, and we have held that they were. The second was whether there was sufficient corroboration of their evidence to justify the District Court in convicting upon it, and we have held that there was not. Accomplices cannot corroborate one another and there was no corroboration whatever for the evidence of Brandt. The evidence which the District Court regarded as corroboration of Demetriou was no corroboration. The third question related to the admissibility of the evidence of Paktines and Malis, and we have held that the evidence was not admissible, either to corroborate Demetriou or on any other ground.

Apart from the wrongful admission of evidence, if this case had been tried before a jury in England it would have been open to the jury to convict the accused on the uncorroborated evidence of the accomplices Demetriou and Brandt if they believed that evidence and if they had previously been fully directed by the judge as to the desirability of corroboration and the absence of it in this case. But the position of Courts in Cyprus in this matter is not the same as that of juries in England. In Cyprus Courts are bound by a statutory provision and are expressly prohibited from convicting an accused person on the uncorroborated evidence of accomplices. Having regard to the conclusions at which we have arrived, that provision alone is sufficient to determine this appeal and there is no occasion to consider the effect on the conviction of the wrongful admission of evidence.

This appeal must therefore be allowed and the conviction quashed.