[HALLINAN, C. J. and ZANNETIDES, J.]
(April 24, 1956)

KOKOS MICHAEL PAPADOPOULLOS of Morphou, *Appellant,*

v.

THE POLICE, *Respondents.*

(Criminal Appeal No. 2046)

Criminal Law—Abduction—Possession and custody of parent —Criminal Code, s. 143—Defilement of girl under 16— Evidence of age—Section 147 A — Omission to refer to certain evidence in summing up—Not a misdirection.

The appellant was convicted of abduction under section 143 of the Criminal Code and of defilement of a girl between 13 and 16 years under section 147 A.

The appellant had on several occasions taken the girl out for a drive to a forest and there seduced her. The appellant did not give or call evidence but the girl stated in cross-examination that she thought she was 17 years old and had so told the appellant and the police.

The trial Court convicted on both counts.

Upon appeal,

Held: (1) Having regard to the duration of the girl's absence from home and the time of day, the evidence was insufficient to support the finding that she was taken out of the custody or protection of her father.

R. v. *Timmins*, 8 Cox, p. 401 considered.

Conviction under section 143 set aside.

(2) Despite the fact that the trial Court in summing up did not refer to the girl's statement as to her age, neither such evidence nor the omission to refer to it was sufficient reason to disturb the conviction under section 147 A.

Appeal by the accused from the judgment of the District Court of Nicosia (Case No. 2597/56).

Glafcos Clerides for the appellant.

H. G. A. Gosling, Crown Counsel, for the respondents.

The judgment of the Court was delivered by:

HALLINAN, C. J.: In this case the appellant has been convicted of abducting a girl under the age of 16 contrary to section 143 of the Criminal Code and of defilement of a girl between the ages of 13 and 16 years contrary to section 147 A.

The appellant had had meetings with the girl Papiri on seven occasions. On the second occasion he promised to marry her and on three occasions he had taken her for a drive in a motor car. On the second and third occasions of these drives he had taken her to the forest and there seduced her. On the last occasion she was seen in

the appellant's company by her relations who informed her father and these proceedings were the result of the information he received.

It was the taking of the girl for the last drive on the 31st December which was the occasion of the alleged abduction, and in the particulars of the second count the time of the alleged seduction is laid between the 1st and 31st December.

There was ample evidence for the trial Court to find that the girl was under the age of 16 at the material time and that the appellant had offered her an inducement to go out with him.

As regards the conviction for abduction, the point of substance on this appeal is whether, having regard to the length of time the girl was absent from her home with the appellant and his intention in getting her to go with him, there was sufficient evidence to support the finding that the appellant had taken the girl out of the custody or protection of her father. The authority cited which is most in point is *R.* v. *Timmins*, 8 Cox, p. 401, where Erle, C. J., in the course of his judgment stated:

> "The difficulty in the construction of the statute is, what is meant by taking a girl out of the possession of her father? The taking of a girl away might be consistent with the possession of the father if the girl goes away with the party, intending to return in a short time; but where a person takes a girl away *from the possession of the father, and keeps her away* against his will for such a length of time as in this case, keeping her from her home for three nights, and cohabiting with her during that time, we think that the evidence justified the jury in finding that the prisoner took the girl out of the possession of the father and against his will, within the meaning of the statute. The prisoner took the girl away from under her father's roof, and placed her in a situation quite inconsistent with the existence of the relation of father and daughter. Our judgment in this case is, that there was evidence which justified the conviction—which we consider to be the point submitted to us—although the prisoner did not intend to keep her away from her home permanently, but when his lust was gratified to cast her from him. We limit our judgment to the facts in this particular case. It may be that a state of facts might arise upon which the offence would be complete in law when the girl passed the threshold of her father's house, as when she is taken away with the intention of keeping her away permanently. We do not mean to say that a person would be liable to a conviction under this section, if it should appear that the taking was intended to be of a temporary nature only, or

for the purpose of taking a girl and placing her in some situation not inconsistent with the relation of father and child. It is sufficient for us to say that there was evidence in this case which justified the conviction."

Considering the decision in Timmin's case the learned trial Judge said:

> "My difficulty with reference to this charge is that in all cases the taking although temporary was for some duration. The minimum three nights. In this case the taking was for some hours, from soon after lunch up to late in the afternoon.
>
> Considering the facts of this case and the fact that the purpose for which the prisoner took away the girl was clearly inconsistent with the relation of father and child, I find that even in this case there is taking which makes the prisoner liable."

In our view, the primary purpose of section 143 is to safeguard the right of a parent to the possession of their child. The protection of the girl against seduction is not the primary object of the section. The protection of a girl under 16 from seduction is now specially safeguarded by section 147 A. It is not unusual in modern times for a girl to absent herself from home for an afternoon without the consent of her parent and few parents would consider that the girl had thereby ceased to be in their custody or under their protection. On the other hand, if as in Timmin's case, a girl is taken from a London suburb by the prisoner and they go up to London together spending three days visiting places of public entertainment and sleeping together at night, in such circumstances the girl is placed in a situation quite inconsistent with her parents' right of custody and protection. What length of time during which a girl is taken out of the custody or protection of her parent is sufficient to support a conviction for abduction must in every case be a question of fact.

Having regard to the duration of the girl's absence from home in this case and the time of day when it occurred, we do not think that the circumstances of her absence are sufficient to support a finding that she was taken out of the custody or protection of her father, even though the appellant during her absence from home seduced the girl.

The conviction and sentence on the first count must, therefore, be set aside.

As regards the conviction for defiling a girl between the age of 13 and 16, counsel for the appellant has submitted that the learned trial Judge misdirected himself on the evidence when he held that the appellant had failed

to adduce sufficient evidence that he had reasonable cause to believe and did believe that the girl was over 16 years old. In dealing with this aspect the trial Judge states:

> "In my mind it is for the defence to prove that the prisoner had reasonable cause to believe and did in fact believe that the girl was over 16 years of age.
>
> In the present case the prisoner decided to give no evidence and therefore on the evidence as it is before me and viewing it in the light of the facts and decisions of the cases referred to above I come to the conclusion that the defence failed."

Counsel for the appellant has argued that the trial Judge did not direct his attention to the fact that the girl herself in cross-examination had said that she was under the impression that she was 17 years old and had said so to the appellant; and, moreover, she had so stated to the police when this charge was under investigation. This evidence is not by any means conclusive, for it does not show whether the girl made the statement about her age to the appellant before or after he had seduced her; nor is there any evidence of something said or done by the appellant to show that he actually believed what she alleges that she said to him. In any event this Court cannot assume that, because the trial Judge did not specifically mention this piece of evidence in his judgment, he had overlooked it when reaching his decision.

We see no reason for disturbing the conviction and sentence of the appellant on the second count.

[HALLINAN, C. J. and ZEKIA, J.]
(May 8, 1956)

1. TAM WING KWONG,
2. SHIU WAI MING,
3. TAM YICKAOU of Hong Kong, *Appellants.*

v.

SPYROS ANASTASSIOU of Limassol, *Respondent.*

(Civil Appeal No. 4152)

Contract — Proper law of the contract — Presumption that English and foreign law identical.

Even where the proper law of the contract is not English law, the foreign law will be held to be identical with the English law respecting the matter in question in the absence of satisfactory proof.

Appeal by plaintiffs from the judgment of the District Court of Limassol (Action No. 1393/51).

M. Houry with *J. Jones* for the appellants.