[VASSILIADES, P., JOSEPHIDES, HADJIANASTASSIOU, JJ.]

COSTAS MICHAEL PLATRITIS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2844)

Criminal Law—Stealing—Stealing money entrusted to appellant to retain in safe custody and pay it to a specified person—Criminal Code, Cap. 154, *sections* 255, 257 *and* 270 (*b*)—*Ingredients of the offence—Fraudulent conversion—Conviction of appellant upheld—Taking money with intent permanently to deprive the owner thereof—"Permanently"—Intention to repay or hope or expectation to repay—Not inconsistent with taking the money "fraudulently" and with the intent permanently to deprive the owner thereof—Cfr: Sections* 258, 259, 260 *and* 262 *of the Criminal Code, Cap.* 154—*Cfr. The Larceny Act,* 1916, *section* 1 (1) (2) (*i*) (*c*) *and section* 20.

Criminal Procedure—Appeal—Findings of primary facts and inferences therefrom, reasonably open to the trial Court on the evidence before it—Conviction upheld.

Fraudulent conversion—See above.

Stealing—Money entrusted to retain in safe custody—See above.

The Appellant was convicted at the District Court of Nicosia on September 19, 1966, of the offence of stealing the sum of £445, the property of one Myrianthi Michael, contrary to sections 255, 257 and 270 (*b*) of the Criminal Code, Cap. 154 and was sentenced to pay a fine of £150. The aforesaid sum was collected from members of both the Police and the Gendarmerie and entrusted to the appellant, a Police Sub-Inspector, for safe custody with instructions that it should ultimately be handed over to the said Myrianthi, the widow of the late Sergeant Michael who died on the 26th October, 1963. The sum in question was entrusted to the appellant in December 1963, when it ought to have been paid as aforesaid. The appellant disposed of the said amount for the needs of his family and some time in July 1965 he made a full confession to the widow referred to above to whom he delivered a bond for that amount, antedated as on the 1st July,

1964. Although the appellant was given a period of six months to pay to the widow the amount due under the bond, the only payment he ever managed to make was the sum of £65 paid on the 2nd February, 1966. It is common ground, however, that the balance of £380 was deposited with the Registrar of the District Court of Nicosia by the appellant during his trial on the 11th August, 1966, for the benefit of the estate of the late Sergeant the said Michael.

The appellant appealed against his conviction on three grounds: (1) The verdict was unreasonable and against the weight of evidence; (2) the trial Judge erroneously found the appellant guilty of larceny in that: The evidence adduced failed to establish that the appellant received the said sum of £445 fraudulently *i.e.* with *animus furandi* at the time of the taking of the money; and (3) the Court erroneously found that the combined effect of sections 255. 257 and 270 of the Criminal Code is to create in Cyprus the offence of fraudulent conversion as known in England under section 20 of the Larceny Act, 1916.

Section 255 of the Criminal Code, so far as relevant, reads as follows:

"A person steals who, without the consent of the owner fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent, at the time of such taking, permanently to deprive the owner thereof.

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee ..... he fraudulently converts the same to his own use ..... ."

Sections 257 and 270, so far as relevant, provide:

"257. When a person receives .... any money ... whether capable of being stolen or not, with a direction in either case that such money or any part thereof ... shall be applied to any purpose or paid to any person specified in the direction, such money ..... are deemed to be the property of the person for whom the money .... was received until the direction has been complied with".

Section 270—

"If the thing stolen is any of the things following that is to say—

(*a*) .....

(*b*) the property which has been entrusted to the offender . to retain in safe custody . . to deliver for any purpose or to any person the same the offender is liable to imprisonment for seven years "

The Court in dismissing the appeal

Held, per HADJIANASTASSIOU, J

(1) Under the sections charging the accused (*supra*), it is essential that three things should be proved to the satisfaction of the Court first that the money was entrusted to the accused person for a particular purpose , secondly, that he used it for some other purpose and thirdly that such misuse of the money was fraudulent and dishonest

(2)—(*a*) I am satisfied that the prosecution has proved to the satisfaction of the Court (*a*) that the amount of £445 has been entrusted to the accused person for the purpose of paying it over to the widow of the late Sergeant Michael as soon as the collection was over , (*b*) that the accused person used it for the medical expenses of his wife and the maintenance and schooling of his children , and (*c*) that from the actions of the appellant it left no doubt in the Court's mind that the disposal of the money had been dishonest

(*b*) The Court of trial took that view which was open to it to take in view of the totality of the evidence

(3)—(*a*) It was further contended for the appellant that he was not guilty of larceny, because the appellant intended to repay the money, whereas the essential ingredient of the offence is that at the time of the taking the accused person must have intended fraudulently to permanently deprive of his property the owner

(*b*) What amounts to a " taking " sufficient to amount to larceny was much discussed in *Middleton* [1873] L R 2 C C R 38 and in my opinion it was the effect of that decision which is reproduced and enacted as the law See section 1 (2) (*i*) (*c*) of the Larceny Act which provides

" The expression ' takes ' includes obtaining possession under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained "

This, in my opinion, is affirming the common law that the taker must have *animus furandi* at the time when he takes the property But sub-section (1) of the same Act says : " Fraudulently and without claim of right " I am of the opinion that the word " fraudulently " does add something to the words " without claim of right ", and it means that the taking must be intentional and deliberate, that is to say, without mistake

(c) In the present case the appellant knew at the time of the taking of the money that it was the property of the widow of the late Sergeant and took the money deliberately and converted it to his own use and with an intent to deprive the owner of the money

(4)- (*a*) With regard to the argument of Counsel on behalf of the appellant that he intended to repay it and had reasonable grounds for repayment, does it make any difference that he intended to repay the money which can only mean from the facts of this case that he only hoped he would be able to repay the money ? Dicta by Lord Goddard C J in *R* v *Williams and Another* [1953] 1 All E R 1068, at p 1070, adopted and applied

(*b*) Therefore, it seems to me that by taking the money and using it for his own purposes, the appellant intended to deprive of the money the widow and in so doing he acted fraudulently and without a claim of right, because he knew that he had no right to take the money The fact that he may have had a hope or expectation in the future of repaying that money and in the present case, it has been proved that he was not in a position to do so at the time, is a matter which it most can go to mitigation It does not amount to a defence

(5) The appeal therefore fails

Held, per VASSILIADES, P :

(1) I had the advantage of reading in advance the Judgment of Mr Justice Hadjianastassiou , and I agree with the result

(2) But I take the view that it is safer to approach the case in hand through the provisions of our Criminal Code, rather than through English case-law resting on the provisions of the English Larceny Act, which, as pointed out in *Charalambos Soteriou* v *The Republic*, 1962 C L R 188, at p 195, is not directly the model of our Code

(3)—(*a*) The case for the appellant is that when he received the money for custody as directed by his superior officer, the appellant had no intention of stealing it or of using it for his own purposes. And later, when he wrongly "borrowed" the money for his own purposes (the pressing needs of his family) his intention was to pay it back; as in fact he eventually managed to do so.

(*b*) This is where I think, reference to the English Larceny Act, and to cases decided thereon, regardless of the relative provisions in our Criminal Code, may lead to difficulties.

(*c*) Here, in Cyprus we have statutory provisions regarding the matter under consideration, which provide that a person steals money entrusted to him, if "without the consent of the owner, fraudulently and without a claim of right made in good faith", takes such money. The statute expressly provides that he may be guilty of stealing such money "notwithstanding that he has lawful possession" of it if he fraudulently convert it "to his own use or the use of any person other than the owner".

(4)- (*a*) "Fraudulently", does not always mean with the intention of never paying it back. In the circumstances of this case, for instance, "borrowing" the money in his custody may well amount to fraudulent conversion of the money to his own use, under our code, notwithstanding an intention at the time of paying back an equal amount of money at some future time. By taking the money in order to use it for a purpose other than that for which it was entrusted to him, the appellant did deprive the owner permanently of the property in certain particular bank-notes or bills, notwithstanding his intention to replace them later with other notes or bills of equivalent value.

(*b*) And he did so "fraudulently" in order to derive the advantage of their use, knowing that he had no such right or the consent of the owner.

(*c*) Our Criminal Code clearly provides that such conduct amounts to the offence of which the appellant was convicted.

Held, per JOSEPHIDES, J.:

(1) I concur. The findings of primary facts and the inferences from those facts, were reasonably open to the trial Judge on the evidence before him.

(2) On that basis the trial Judge rightly found that the appellant acted fraudulently and without any claim of right and with intent to deprive permanently the owner of the money taken.

(3) The appellant was, therefore, rightly convicted under the provisions of sections 255, 257 and 270 (*b*) of the Criminal Code, Cap. 154 of the offence of stealing money entrusted to him to retain in safe custody and pay to the Sergeant's widow.

Appeal dismissed.

Cases referred to :

Middleton [1873] L.R. 2 C.C.R. 38 ;

R. v. *Williams and Another* [1953] 1 All E.R. 1068, at p. 1070 per Lord Goddard C.J., *adopted and applied* ;

Charalambos Soteriou v. *The Republic*, 1962 C.L.R. 188, at p. 195 ;

Thompson v. *Nixon* [1965] 3 W.L.R. 501, at p. 506.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 24th September, 1966, at the District Court of Nicosia (Criminal Case No. 6652/66) on one count of the offence of stealing by agent, contrary to sections 255, 257 and 270 (*b*) of the Criminal Code, Cap. 154 and was sentenced by Stylianides, D.J. to pay a fine of £150.

L. Clerides, for the appellant.

S. Georghiades, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court :

VASSILIADES, P.: Mr. Justice HadjiAnastassiou will deliver the first judgment.

HADJIANASTASSIOU, J.: The appellant was convicted at the District Court of Nicosia on September 19, 1966, of the offence of stealing the sum of £445 the property of one Myrianthi Michael, contrary to sections 255, 257 and 270 (*b*) of the Criminal Code Cap. 154, and was sentenced to pay a fine of £150. He now appeals against his conviction

on three grounds : (1) The verdict was unreasonable and against the weight of evidence ; (2) the Court erroneously found the appellant guilty of larceny in that : the evidence adduced failed to establish that appellant received the sum of £445 fraudulently, *i.e.* with animus furandi at the time of the taking of the money and (3) the Court erroneously found that the combined effect of sections 255, 257 and 270 of the Criminal Code is to create in Cyprus the offence of fraudulent conversion as known in England under section 20 of the Larceny Act 1966.

Undoubtedly the collection of the money for the family of the late Sergeant Michael had been concluded some time in December, 1963 ; and the amount entrusted to the accused to retain in safe custody and to deliver to the widow, was converted by the accused to his own use, before his visit to the house of the widow on the 10th July, 1965.

This case presents some remarkable and unusual features. Had it not been for the failure of the accused to pay the amount due under the bond, this case might have never reached the Court. The investigation started on the 14th February, 1966 ; and the charge against the accused was filed in Court on April 26, 1966.

The accused joined the Police Force in 1944, and was promoted to the post of a Sub-Inspector in 1956, having served as from 1945 for a considerable period in the accounts section of the police headquarters. The accused was in charge of that section during the material date in November and December, 1963 ; and had in his possession the keys of the safe in that office, until the 10th July, 1965.

Following the death of the late Sergeant Michael on 26th October, 1963, an appeal for contributions was circulated amongst the members of both the Police and the Gendarmerie for the purpose of collecting funds to help financially his family. When A.S.P. Stokkos (P.W.3) became in charge of the fund, he instructed and authorized the accused to receive the money and issue receipts for such collections ; and to keep all such money into the safe of the accounts section until the collection of all contributions. The accused, S/I Christodoulides and A.S.P. Stokkos, would then visit the widow and hand over to her the whole amount collected.

This was completed by the 15th December, 1963 ; accused informed A.S.P. Stokkos of the exact amount collected and as exhibits 2-10 inclusive show, an amount of £445

was handed over to the accused, including two money orders of the amounts of £15.700 mils and £10.400 mils issued to the Commander of the Gendarmerie. The two money orders were endorsed by A.S.P. Danos.

According to A.S.P. Stokkos, when the accused informed him early in December, 1963, that the collection came to an end, he told the accused that it was time to issue a cheque and to hand it over to the widow of the deceased. Accused's comment was to the effect that he had some difficulty, because from the money of the fund he had cashed some cheques to Mr. M. Reffic, the Assistant Commander of the Police Force, to Chief Spt. HadjiLoizou and to a certain P.C. Vedat Hussein ; the accused person then went on to add "when I will clear the cheques I will do so ".

On the 21st December, 1963 the recent events took place and fighting broke out in Cyprus between the Greek and Turkish Cypriots ; and, the Police Force found itself very busy mostly with security duties. A.S.P. Stokkos was appointed as general security officer and in June, 1964, he was transferred to Nicosia divisional police. The accused was also serving as a security officer as from the 22nd December, 1963, till the 20th February, 1964, over and above his usual duties.

It appears that the entrusting of the money of the fund to the accused was almost forgotten by everyone ; but when some time in the autumn of 1964, A.S.P. Stokkos met the accused by chance and enquired about the money, the accused told him that he had visited alone the widow and handed it over to her ; questioned further by the witness whether he had obtained a receipt, accused's reply was to the affirmative.

On the 10th July, 1965, the accused was informed by Chief Supt. Antoniou (P.W.2) of his transfer to the central police headquarters, and was instructed to deliver all files to the supervisor of accounts, Mr. N. Georghiou (P.W.13) and the accounts dealing with the welfare fund of the police to Inspector Patsalides (P.W.12) Accused complied with the instructions on the same day ; he handed over the keys of the safe to Mr. N. Georghiou without mentioning the money of the fund to either of them.

The accused must have been very upset and worried about his transfer ; it appears from his actions on that date that he must have connected it with the non-payment of the money to the widow. According to Myrianthi

Michael (P.W.16) the accused and his wife visited her home at Eylenja in a taxi, late in the evening of the 10th July, 1965 ; the accused started crying and said to the widow " I came to beg you for the money which were given to me by the police to pay over to you. I was in need of the money for my wife and children. I do not have it. I require a receipt from you so that I would not lose my job ". The witness remarked that it was too late in the night and to wait until tomorrow to consider it ; accused then went on to say that it was a matter of urgency ; he offered to sign a bond for the amount of £445 which he admitted collecting from the police ; she agreed to give him a receipt for that amount, as well as for the signing of the bond. The accused drafted and signed the bond, (*exhibit* 1), promising to pay to the witness on 31st December, 1965, the sum of £445 with interest at 8% as from the 1st July, 1964. Accused's wife signed exhibit 1 as guarantor ; the bond was dated the 1st July, 1964. Questioned by the witness as to that date, accused's reply was " that the 1st July, 1964 was the date he had to deliver the money to her ". In the meantime the father of the widow (P.W.17) prepared a receipt, which was signed by the widow and was handed over to the accused ; as no date appeared on the receipt, according to P.W.17 the accused himself inserted the date of the 1st July, 1964. This receipt was not produced in Court, and one may think for a good reason, because it would show that the accused was trying even at that late stage, to deceive the Police Force that the money had been paid to the widow since that date.

Although the accused was given a period of six months to pay to the widow the amount due under the bond, the only payment he ever managed to make was the sum of £65 paid on the 2nd February, 1966. It is common ground, however, that the sum of £380 was deposited with the Registrar of the District Court of Nicosia by the accused during his trial on the 11th August, 1966, in favour of the estate of the late Yiannis Michael.

The appellant's evidence, was to the effect that he was authorized by A.S.P. Stokkos to receive the money and to keep it in the safe for the family of the late Sgt. Michael ; he admitted collecting the amount of £445, but he denied that the collection came to an end before the 21st December, 1963 ; from the amount of money entrusted to him he cashed various cheques to members of the Police Force amounting to £140. These cheques as well as the two money orders, were not cashed ; but the cheque of Chief

Spt. HadjiLoizou has not even been presented to the bank for payment. He admitted visiting the house of the widow in October or November, 1964, and after informing her that the amount of £445 has been collected, he told her that he needed that amount as a loan to pay for his medical treatment. He admitted signing the bond, (*exhibit* 1), but he denied that he had asked for a receipt ; he maintained that from his savings as well as a loan from the police co-operative bank it would have enabled him to pay the amount due to the widow. In effect the accused denied stealing the money of the collection, because he claims that he had the money with him on the date he visited the house of the widow.

I find it convenient to deal with the third ground of the appeal first :

The main argument of appellant's counsel before us, as well as before the trial Court, was that the combined effect of sections 255, 257 and 270 of the Criminal Code Cap. 154, do not constitute the offence of fraudulent conversion contrary to section 20 of the Larceny Act 1916. The learned trial Judge in rejecting appellant's submission on this issue, found that the combined effect of the three sections under which the accused was charged, constituted the offence of fraudulent conversion. I find myself in full agreement with the above contruction of the law by the learned trial Judge. Section 255, so far as relevant, reads as follows :

> " A person steals who, without the consent of the owner fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof."

Then follows the important proviso which repeats the substance of the provisions of section 3 of the Larceny Act, 1861 :

> " Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee . . . .he fraudulently converts the same to his own use . . . . . ".

Sections 257 and 270 so far as relevant read :

> " When a person receives . . . . . .any money . . . . . whether capable of being stolen or not, with a direction in either case that such money or any part thereof . . .

shall be applied to any purpose or paid to any person specified in the direction, such money . . . are deemed to be the property of the person for whom the money . . . . was received until the direction has been complied with."

Section 270—

"If the thing stolen is any of the things following that is to say—

(*a*) . . . . . .

(*b*) the property which has been entrusted to the offender . . . . . to retain in safe custody . . . . to deliver for any purpose or to any person the same . . . . .the offender is liable to imprisonment for seven years."

In my opinion, under the sections charging the accused, it is essential that three things should be proved by the prosecution to the satisfaction of the Court ; first, that the money was entrusted to the accused person for a particular purpose ; secondly, that he used it for some other purpose ; and thirdly that such misuse of the money was fraudulent and dishonest.

Going through the record very carefully, I am satisfied from the evidence that the prosecution has proved to the satisfaction of the Court (*a*) that the amount of £445 has been entrusted to the accused person for the purpose of paying it over to the widow of the late Sergeant, as soon as the collection was over, (*b*) that the accused person used it to pay for the medical expenses of his wife and the maintenance and schooling of his children and (*c*) that from the actions of the appellant it left no doubt in the Court's mind that the spending of the money had been dishonest. The Court took that view, which was reasonably open to the trial Court to take, in view of the totality of the evidence, and I see no reason to interfere with such finding ; for these reasons I have reached the conclusion that ground 3 of the appeal cannot succeed.

With regard to ground 2 of the appeal, it was further contended for the appellant that he was not guilty of larceny, since it was an essential ingredient of the offence that at the time of the original taking of the money should have intended fraudulently and without a claim of right made in good faith, permanently to deprive of his property the owner ; and that the appellant intended to repay the money.

What amounts to a "taking" sufficient to amount to larceny was much discussed in *Middleton* (1873) L.R. 2 C.C.R. 38 and in my opinion it was the effect of that decision which is reproduced and enacted as the law. Section 1 (2) (i) (*c*) of the Larceny Act 1916 provides :

> "The expression 'takes' includes obtaining possession under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained."

This, in my opinion, is affirming the common law that the taker must have animus furandi at the time when he takes the property.

In *Middleton's* case (*supra*) the wrong amount of money was paid by the Post Office clerk before the accused person picked it up, knowing of the clerk's mistake, and so took it *animo furandi*. But sub-section (1) of the same Act says : "Fraudulently and without a claim of right". I am of the opinion that the word "fraudulently" does add, and is intended to add, something to the words "without a claim of right", and it means that the taking must be intentional and deliberate, that is to say, without mistake. In the present case, as it has been found by the trial Court, the appellant knew at the time of the taking of the money from the safe that it was the property of the widow of the late Sergeant and that he took the money deliberately ; he converted the money to his own use and with an intent to deprive the owner of the money. As I said the Court took this view which was reasonably open to the trial Court and I see no reason to interfere. With regard to the argument of the counsel for the appellant that he intended to repay it and had reasonable grounds for repayment, does it make any difference that he intended to repay the money which can only mean from the facts in this case that he only hoped he would be able to repay the money ? I consider it constructive to quote from the judgment of Lord Goddard, C.J., in the case of *Rex* v. *Williams and Another*, [1953] 1 All E.R. 1068 at p. 1070 ; as I am in agreement with the reasoning behind this case I would adopt and apply it in the case before us.

> "It is one thing if a person with good credit and plenty of money uses somebody else's money which is in his possession—it having been entrusted to him or he having the opportunity of taking it—he merely intending to use those coins instead of some of his own which he has only to go to his room or to his bank to get. No jury will then say that there was

any intent to defraud or any fraudulent taking, but it is quite another matter if the person who takes the money is not in a position to replace it at the time but only has a hope or expectation that he will be able to do so in the future and, in considering whether this court is to give effect to the rider of the jury we must bear in mind the pronouncement which is the *locus classicus* in this matter—Channell, J.'s charge to the Jury in *Rex* v. *Carpenter* (1911), 76 J.P.158 referred to by this Court in *R.* v. *Kritz* [1949] 2 All E.R. 406".

In the present case the appellant intended to use the money and in fact has used it for purposes different from those for which he was holding it and for which the persons of the Police Force who paid the money intended it to be used, namely. for aiding financially the widow of the late Sergeant. Therefore, it seems to this Court that by taking the money and using it for his own purposes, the appellant intended to deprive of the money the widow and in so doing he acted fraudulently and without a claim of right, because he knew that he had no right to take the money which he knew was not his. The fact that he may have had a hope or expectation in the future of repaying that money, and in the present case it has been proved that he was not in a position to do so at the time, is a matter which at most can go to mitigation. It does not amount to a defence. The appellant's own evidence shows that when he visited the house of the widow he knew that he was guilty of the misappropriation of the money. On the whole I am satisfied that the findings made by the learned trial Judge were reasonably open to him on the evidence, and I see no reason to interfere with such findings.

The appeal, therefore, fails.

VASSILIADES, P.: I had the advantage of reading in advance the judgment of Mr. Justice HadjiAnastassiou ; and I agree with the result. But I take the view that it is safer to approach the case in hand, through the provisions of our Criminal Code, upon which it has to be decided, rather than through English case-law resting on the provisions of the English Larceny Act, which, as pointed out in *Charalambos Soteriou* v. *The Republic* (1962, C.L.R. p. 188 at p. 195) is not directly the model of our code.

In the present case, the appellant was charged and convicted under sections 255, 257 and 270 (*b*) of the Criminal Code (Cap. 154) of the offence of stealing money found

in his custody. These sections come under Part VI of the Code, dealing with offences relating to property. Sections 255–279 deal with stealing and offences allied thereto.

In considering a charge under this part of the code, the Court must rely on the combined effect of more than one of the sections in question. Section 255, for instance, is a definition section ; section 257 provides for the stealing of money or valuable securities received and held with a certain direction as to their use ; section 258 deals with stealing in connection with property received by agents for sale ; section 259 with the stealing of money received for another ; section 260 with misappropriations by persons having an interest in the thing stolen ; section 262 provides for the general punishment for theft ; and several sections thereafter, provide for the punishment in a variety of aggravated forms of stealing.

In a careful and well considered judgment, the trial Judge found that the appellant, while entrusted with the safe custody of the money in question, he used it (or, at any rate, he used most of it) for his own purposes (the needs of his family) knowing that he was not supposed to do so. The Judge also found that the appellant later signed a bond for the whole amount payable to the person for whom the money was collected ; and eventually he deposited an amount in Court during trial, sufficient for the satisfaction of the balance still payable under the bond.

Dealing with the question of appellant's intention at the time of making use of the money for purposes other than that for which it was entrusted to him, the trial Judge found that the appellant was acting with an intention to deprive the owner of her property in the money (page 36H.) ; and that when he later signed the bond for the amount, the appellant "had merely a hope or expectation that he would be able to repay it in the future". But in fact, he was not in a position to pay anything on the day on which the bond became payable ; and for considerable time thereafter.

The Judge, in these circumstances, held that the offence was committed before the issue of the bond ; and that the signing and issuing of the bond did "not exonerate the accused from criminal liability". Such conduct only went to punishment, the learned Judge thought, as clearly reflected in his sentence.

The case for the appellant is that when he received the money for custody as directed by his superior officer, the appellant had no intention of stealing it ; or of using it for his own purposes. He had no " fraudulent intent " ; no " *animus furandi* ", learned counsel argued. And later, when the appellant wrongly " borrowed " the money for his own purposes (the pressing needs of his family) his intention must have been, and indeed it was—counsel urged—to pay it back ; as in fact he eventually managed to do.

This is where I think that reference to the English Larceny Act, and to cases decided thereon, regardless of the relative provisions in our Criminal Code, may lead to difficulties. *Thompson* v. *Nixon* [1965] 3 W.L.R. p. 501 at p. 506) discussed and decided in May, 1965, before a Divisional Court presided by Lord Parker C.J., is a good illustration of what I mean.

Here in Cyprus, we have statutory provisions regarding the matter under consideration, which provide that a person steals money entrusted to him, if " without the consent of the owner, fraudulently and without a claim of right made in good faith ", takes such money. The statute expressly provides that he may be guilty of stealing such money, " notwithstanding that he has lawful possession " of it, if he fraudulently converts it " to his own use or the use of any person other than the owner ".

Fraudulently, does not always mean with the intention of never paying it back. In the circumstances of this case, for instance, " borrowing " the money in his custody, without the consent of the owner, may well amount, in my opinion, to fraudulent conversion of the money to his own use, under our code, notwithstanding an intention at the time, of paying back an equal amount of money at some future time. By taking the money in order to use it for a purpose other than that for which it was entrusted to him, the appellant did deprive the owner permanently of the property in certain particular bank-notes or bills, notwithstanding his intention to replace them later, with other notes or bills of equivalent value. And he did so " fraudulently " in order to derive the advantage of their use, knowing that he had no such right ; nor did he have the consent of the owner to make such use of his money. Our Criminal Code clearly provides, I think, that such conduct amounts to an offence ; the offence of which the appellant was convicted.

In my opinion this is sufficient to decide the case. I would dismiss the appeal on that ground.

JOSEPHIDES, J.: I concur. The findings of primary facts and the inferences from those facts, were reasonably open to the trial Judge on the evidence before him. On that basis the trial Court rightly found that the appellant acted fraudulently and without any claim of right and with intent permanently to deprive the owner of the money taken.

I am, therefore, of the view that the conviction of the appellant, under the provisions of sections 255, 257 and 270 (*b*) of the Criminal Code, of the offence of stealing money entrusted to him to retain in safe custody, and pay to the sergeant's widow, was, having regard to the evidence adduced, a reasonable one.

I would, therefore, dismiss the appeal.

VASSILIADES, P.: In the result the appeal shall stand dismissed. There being no appeal against sentence, by either side, we do not wish to enter into that matter at all. But we should not be taken as adopting unquestionably the fitness of a sentence of fine in a case of this nature.

Appeal dismissed.